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FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

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F.C.C. 72-1152

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST BY STATION WAAM (AM), ANN ARBOR, MICH., FOR PERMISSION TO AFFILIATE WITH THE ABC RADIO ENTERTAINMENT NETWORK

MEMORANDUM OPINION AND ORDER

(Adopted December 14, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; AND JOHNSON DISSENTING; COMMISSIONER H. REX LEE DISSENTING AND ISSUING A STATEMENT.

1. The Commission here considers letter requests, filed June 2 and July 31, 1972 by Station WAAM, Ann Arbor, Michigan, for Commission permission to affiliate with the ABC Contemporary radio network. Such permission is required because two other AM stations in the Ann Arbor standard metropolitan statistical area (SMSA) have affiliations with ABC radio networks (WPAG, Ann Arbor, with ABC Information and WSDS, Ypsilanti, Michigan, with ABC Entertainment). Since there are a total of five AM stations in the market (in this case the SMSA, or Washtenaw County), ABC is normally limited to two AM affiliates, under the policy enunciated in May 1969 in the decision concerning ABC's operations under its "four network" arrangement (*Mutual Broadcasting System, Inc.*, 17 FCC 2d 509, 16 R.R. 2d 84).

2. The WAAM request claims in substance, that grant of waiver here will merely continue a situation which the Commission has already approved by waiver, as well as serving to provide desirable ABC Contemporary Network service by a station in the Ann Arbor area. Its request is occasioned by the termination (July 7, 1972) of ABC's Contemporary network affiliation with Station WNRS, Saline, Michigan. The facts briefly are as follows: at the time of the May 1969 decision mentioned, two AM stations in this SMSA were affiliated with ABC networks: WPAG, Ann Arbor, ABC Information, and WSDS, Ypsilanti, ABC Entertainment. Thus, the situation in this market complied with the new policy, and no action by ABC or stations there was required. As to other markets where ABC had more affiliates than the new policy contemplated, it was requested to disaffiliate to bring the number within the specified limits, and ABC accordingly notified a number of stations that their affiliations were being discontinued. Numerous stations filed requests for waiver of the policy to continue their affiliations, and these requests were considered by the Commission in

April 1970, the majority being granted. See *American Broadcasting Companies, Inc.*, 22 FCC 2d 241, 18 R.R. 2d 905.

3. Also in April 1970, ABC entered into a Contemporary network affiliation agreement with commonly owned Stations WNRS (AM), Saline, Michigan, and WNRZ (FM), Ann Arbor (Saline is in the Ann Arbor SMSA and less than 10 miles from that city). Since this would have meant more than the permissible number of ABC AM affiliations, the network notified Station WSDS that its Entertainment network affiliation would terminate August 16, 1970, the effective date of the new Contemporary arrangements with WNRS and WNRZ. WSDS sought Commission waiver of the policy, and in August was informally granted temporary waiver by the Broadcast Bureau pending Commission consideration. WSDS thus has continued as an ABC Entertainment affiliate, so that from mid-1970 to mid-1972 there were three ABC AM affiliates in the market. On July 7, 1972, ABC's arrangements with WNRS and WNRZ were terminated because of changes in the stations' format. Station WAAM, Ann Arbor, has now sought waiver, alleging that in substance it merely seeks to restore the situation which existed with Commission blessing—three ABC AM affiliations—even though it would not directly be the recipient of the waiver which was granted to WSDS.

CONCLUSIONS

4. Very shortly—possibly this year, and if not, quite early next year—the Commission intends to begin a general inquiry into network radio matters, including ABC's "four network" operation and what changes, if any, are appropriate in the policy referred to above (it also appears likely that any such policy should be included in the Commission's rules). Meanwhile, it appears appropriate to waive the policy so as to permit WAAM to affiliate with ABC pending institution and decision in the over-all proceeding. Had the WSDS waiver request been before the Commission early in 1970, in all probability it would have been granted in the April 1970 decision mentioned; WAAM's claim that it merely seeks to continue a situation which the Commission has approved is thus largely correct. While waiver here would mean that both AM stations actually licensed to Ann Arbor would be ABC-affiliated (which was not true before), in practice this does not represent much of a change, since WNRS, Saline, which formerly had the ABC Contemporary affiliation, puts a 5 mV/m signal over most of Ann Arbor.[1] The policy, of course, is in terms of SMSA's and stations therein, in the case of communities which are within such areas. It is also noted that an ABC affiliation for WAAM would mean *full-time* ABC AM service, rather than daytime-only as with WNRS; but this is of no adverse significance since all of the other four AM stations in the market are daytime-only. Rather, this would mean that the public interest would be furthered by having ABC network service available locally in the market on a full-time basis. Lastly, there is the consideration—pointed out in WAAM's request—that the former WNRS Contemporary affiliation also meant

[1] Station WYNZ, Ypsilanti (not ABC-affiliated) also provides primary service to Ann Arbor.

ABC service over commonly owned Station WNRZ (FM), Ann Arbor, a concentration situation which will no longer prevail since WAAM does not have a companion FM station. To this extent, concentration of control of the media would be less than it was formerly. Taking into account also the amount of outside AM primary service available in the Ann Arbor area, from stations in Detroit and elsewhere, grant appears warranted.

5. According, IT IS ORDERED, That, until 30 days after any over-all decision concerning ABC multiple AM affiliations in a market with which this present action would be inconsistent, permission IS GRANTED to Station WAAM, Ann Arbor, Michigan, to affiliate with the ABC Contemporary Network.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

In 1967, American Broadcasting Companies, Inc. (ABC), announced its intention to introduce, in January of 1968, four new specialized "American radio networks," featuring entertainment, information, contemporary and FM programming. Initially, the Commission's approval of the ABC proposal was required since Rule 73.137, in effect, prohibits dual network operation in the same area or on a simultaneous basis. After reviewing the ABC proposal, the Commission granted a one-year waiver of Rule 73.137 in order to encourage the development of a new approach to radio networking. See 11 FCC 2d 163, 12 RR 2d 72 (1967). In 1969, the Commission again reviewed the four-network arrangement at the insistence of the Mutual Broadcasting System, Inc. While we rejected most of Mutual's contentions concerning alleged anti-competitive and unfair trade practices in the ABC operation, the Commission did direct ABC to limit its AM affiliations in the smaller radio markets and to disaffiliate with stations, where necessary, to come within specific limitations. The formula adopted by the Commission in 1969 prohibited multiple affiliations so that ABC could not have more than one affiliate in a radio market [1] with four or fewer AM stations or more than two affiliates in a five-station market. In adopting the formula, the Commission expressed its concern with the fact that the ABC radio networks place heavy emphasis on news and commentary and that, therefore, one programming source could have an undue influence in the smaller radio markets. 17 FCC 2d 508, 16 RR 2d 84 (1969).

ABC accordingly proceeded to disaffiliate from stations in several markets, and numerous affected stations, whose affiliation would be discontinued, sought waiver of the limitations contained in the Commission's 1969 Order. Several waivers were subsequently granted by the Commission in 1970 to permit the continued affiliation with ABC radio networks by smaller market stations. See 22 FCC 2d 241, 18 RR 2d 905 (1970). However, the Commission stressed that its action should not be interpreted as an abandonment or weakening of the

[1] Radio market was defined to include the Standard Metropolitan Statistical Area (SMSA) or any community outside of an SMSA.

policy previously announced with regard to multi-network affiliations in smaller markets. To the contrary, the Commission specifically found that the 1969 formula still has validity and that it should be applied more strictly in the future. 22 FCC 2d at 248, 18 RR 2d at 913. The waiver requests considered by the Commission in 1970 did not include any Ann Arbor area station since ABC, at the time, had only two affiliates in the SMSA, which contained five AM stations (two in Ann Arbor, two in Ypsilanti, and one in Saline). In April 1970, ABC entered into a contemporary network agreement with the Saline AM-Ann Arbor FM combination (Stations WNRS and WNRZ) and, as required by the Commission's 1969 policy statement, gave notice to its Ypsilanti affiliate (Station WSDS) that its entertainment network agreement would be terminated. Thereafter, WSDS sought waiver of the multi-network limitations, which was granted by the Broadcast Bureau on a temporary basis. Now, Station WAAM, a full-time AM station in Ann Arbor, requests permission to affiliate with the ABC contemporary radio network, based on the fact that ABC's affiliation with Stations WNRS and WNRZ was terminated in July 1972, following a change in the station's format. WAAM claims that waiver here would only restore a situation which the Commission has already approved—three ABC affiliates in the Ann Arbor SMSA—and the majority agrees that waiver of the 1969 policy is appropriate pending a general inquiry into network radio matters to be initiated shortly.

I cannot concur in the majority's decision. Grant of WAAM's request is patently inconsistent with the formula adopted by the Commission in 1969, which is intended to limit ABC radio network affiliations in smaller markets like Ann Arbor to two AM stations, and with our announced intention to apply the policy strictly to future affiliation agreements. In effect, ABC will be permitted to affiliate with the only two standard broadcast stations licensed to Ann Arbor, which has not been the case in the past.[2] Such multi-network affiliation in Ann Arbor concerns me, for, as we noted in 1969, ABC places great emphasis on news and commentary in its radio network programming and since it is not in the public interest to confine the AM audience in a given area to only one network programming source. Moreover, ABC's disaffiliation with Stations WNRS and WNRZ earlier this year has resulted in a situation in the Ann Arbor area that is consistent with our 1969 formula. While I am most interested in encouraging innovation and experimentation in radio networking, I am not willing to permit the further concentration of programming sources in smaller radio markets. Therefore, I would adhere to the Commission's 1969 policy statement and would deny WAAM's request for permission to affiliate with an ABC radio network.[3]

[2] Currently, ABC has radio network affiliations with Station WPAG in Ann Arbor and Station WSDS in Ypsilanti, and there are a total of five AM stations in the Ann Arbor SMSA.

[3] I do join in the majority's representation that it intends to initiate a general inquiry into radio network matters, including ABC's four-network operation, and what changes, if any, are appropriate in the 1969 policy statement. I am anxious to review the current scope of the ABC radio networks' national coverage and its impact on competitive practices in the industry. See 17 FCC 2d at 513, 16 RR 2d at 90.

F.C.C. 72R-373

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ACTION RADIO, INC. For Renewal of License of Radio Station KTLK, Denver, Colo.	Docket No. 19274 File No. BR-1969

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1972; Released December 15, 1972)

BY THE REVIEW BOARD:

1. By Order and Notice of Apparent Liability, FCC 71-678, 36 FR 12640, published July 2, 1971, the Commission designated the renewal application of Action Radio, Inc. (Action) for hearing under issues to determine whether the licensee had engaged in various instances of misconduct in the operation of its facilities (Issues 1-8), and whether Action had made misrepresentations to the Commission's staff during an investigation of the alleged misconduct (Issue 9). Now before the Review Board is a motion to enlarge issues, filed by Action on September 29, 1972,[1] wherein the applicant seeks the addition of a meritorious programming issue to this proceeding.

2. The Review Board agrees with the Broadcast Bureau to the extent that it contends that Action's motion was not timely filed, and that good cause for the late filing has not been shown. However, since enlargement will not unduly disrupt the proceeding and will not prejudice any party, the Board is of the view that the public interest would be better served if petitioner is nevertheless afforded an opportunity to make a showing of its past program record in mitigation of any adverse findings under Issues 1-8.[2] *Cf. Medford Broadcasters, Inc.*, 18 FCC 2d 817, 16 RR 2d 897 (1969). We will not, however, expand the scope of the meritorious programming issue, as requested by petitioner, to encompass non-programming matters. As pointed out by the Bureau, petitioner cites no precedent to support this aspect of its request, and a determination of whether the station has "otherwise served the needs of its community" would create a virtually "boundless" issue and could have an extremely dilatory effect on the conduct of the proceeding. The Board has, in the past, denied other requests to

[1] The Broadcast Bureau filed an opposition to the motion on October 12, 1972, to which Action filed a reply on October 25, 1972.

[2] As noted by the Bureau, the Board has recently held that the evidence adduced under a meritorious programming issue cannot be used to mitigate the significance of misrepresentations to the Commission, *KFPW Broadcasting Co.*, 33 FCC 2d 313, 23 RR 2d 515 (1972). Therefore, the issue being added herein has no relevance to the resolution of existing Issue No. 9.

broaden the scope of this issue,[3] and we perceive no valid reason for expanding it here.

3. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed September 29, 1972, by Action Radio, Inc. IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

4. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issue:

To determine whether the past programming of Station KTLK has been meritorious, particularly with regard to public service programs, so as to constitute a countervailing factor in the resolution of this case insofar as it relates to Issues 1 through 8.

5. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof under the issues added herein SHALL BE on Action Radio, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[3] See, *e.g., Chronicle Broadcasting Co.*, 18 FCC 2d 120, 16 RR 2d 494 (1969); *United Television Co., Inc.*, FCC 70R–246, 19 RR 2d 625; and *The Jack Straw Memorial Foundation*, 26 FCC 2d 97, 20 RR 2d 492 (1970).

F.C.C. 72R-369

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ATS MOBILE TELEPHONE, INC.	Docket No. 19500 File No. 4034-C2-P-70
PAUL D. JONES AND JON N. FARRINGTON D.B.A. COUNCIL BLUFFS MOBILEPHONE	Docket No. 19501 File No. 2675-C2-P-70
CURTIN CALL COMMUNICATIONS, INC.	Docket No. 19502 File No. 4032-C2-P-70
For Construction Permits to Establish new Facilities in the Domestic Public Land Mobile Radio Service at Council Bluffs, Iowa.	

ORDER

(Adopted December 12, 1972; Released December 12, 1972)

BY THE REVIEW BOARD:

1. The Review Board having under consideration the petition filed on December 8, 1972, by ATS Mobile Telephone, Inc., for an extension of time to and including December 22, 1972, within which to file responsive pleadings to the petition to enlarge issues filed by Curtin Call Communications, Inc. on November 14, 1972;

2. IT APPEARING, That counsel for the other parties have indicated to petitioner their consent to a grant of the relief requested;

3. IT IS ORDERED, That the petition for extension of time IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1128

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO., AND THE ASSOCIATED BELL SYSTEM COMPANIES Charges for Interstate Telephone Service, Transmittal Nos. 10989 and 11027	Docket No. 19129

ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND H. REX LEE DISSENTING

1. We have under consideration paragraph 114 of our Decision and Order released herein on November 22, 1972 (FCC 72-1059) wherein we stated that we would issue a supplemental order indicating our disposition of each individual exception properly filed by the parties.

2. In accordance with the foregoing, we are attaching hereto, our rulings on the various exceptions filed by the parties to the Initial Decision of the Hearing Examiner (now Administrative Law Judge).

3. IT IS ORDERED, That the attached rulings on exceptions herein ARE HEREBY ADOPTED by the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX D

RULINGS ON EXCEPTIONS

A. *The Communications Workers of America, AFL-CIO (CWA).*

Exception No.	*Ruling*
1-6	*Granted.* CWA will be permitted to participate as a party in Phase II hereof.

B. *Utility Users League.*

Exception No.	*Ruling*
1	*Granted.* Record supports our Decision that AT&T is entitled to a minimum interstate return greater than the 7.9% or 8.25% allowed by the Examiner.
2	*Denied.* No record citation given to any part of this exception (Sec. 1.277 of rules). Moreover, our Decision gives proper weight to the risk factors in AT&T's interstate operations.
3	*Denied.* No supporting record citation. Moreover, record supports minimum interstate return of 8.5% rather than something less than 8%.
4	*Denied.* No supporting record citation. Moreover, our Decision gives adequate consideration to objections by parties to AT&T's request for 9.5% return.

Exception No.	Ruling
5	*Denied.* No supporting citation. Moreover, record supports our Decision that a minimum level of interstate earnings of 8.5% would be just and reasonable.
6	*Denied.* No supporting record citation. Moreover, record (including officially noticed data) supports our Decision that we can determine AT&T's fair rate of return under current and immediately foreseeable conditions.
7	*Denied.* No supporting record citation. Moreover, exception is of no decisional significance in view of our findings as to the permissible range of AT&T's interstate earnings. (See paragraph 107)
8	*Denied.* No supporting record citation. Moreover, no record basis exists for ordering cancellation of the January, 1971 $250 million rate increases or for making refunds.
9	*Denied.* No supporting record citation. Moreover, our decision gives adequate weight to the testimony and contentions of AT&T and all other parties.
10	*Denied.* No supporting record citation. Record shows to the contrary that due process was accorded to all parties, including users and user groups.
11	*Denied.* Exception fails to indicate in what way Examiner failed to balance interests of all parties.
12–13	*Denied.* No record citation or other support for alleged current and immediately foreseeable "depressed economic conditions."
14	*Denied.* Blanket incorporation of "not inconsistent" exceptions by other parties is not permitted by rules.

C. *Microwave Communications, Inc. (MCI).*

Exception No.	Ruling
1	*Denied.* Rejected testimony on proper rate relationship among various classes of service is not relevant to the sole issue in Phase I of this case, namely the fair rate of return for Bell's total interstate (and foreign) operations. (See paragraphs 6–8 of Decision)
2	*Denied.* Question of whether January, 1971 rate increases should have been imposed entirely on MTS users is not in issue in Phase I of this case. (See paragraphs 108–109 denying MCI's petition for reconsideration)
3	*Denied.* Question of whether further increases in Bell's rates should be borne by services other than MTS is not in issue in Phase I of this case. (See paragraphs 6–8; and 108–109)

D. *United Telephone System (UTS).*

Exception No.	Ruling
1	*Granted.* Examiner apparently overlooked fact that UTS had adopted proposed findings of USITA.
2	*Granted.* Testimony in question is referred to in Appendix C of our Decision (paragraph 1)
3	*Denied.* Findings requested as to revenues and earnings of independent telephone companies are irrelevant to the sole issue in Phase I of this case, namely, the fair rate of return for Bell's total interstate and foreign services.
4	*Denied.* Failure of Initial Decision to refer by name to witness Foster does not mean that his testimony was not considered by the Examiner in arriving at the findings and conclusions, particularly since this witness's approach and testimony were generally the same as Bell's witness Scanlon. We have considered the testimony of witness Foster in arriving at our decision.

Exception No.	*Ruling*
5	*Denied.* Record does not support requested finding that witness Foster's opinion on Bell's allowable rate of return "is entitled to great weight." The Commission gave appropriate consideration to his testimony in arriving at Bell's fair rate of return.
6 and 10	*Granted.* Our Decision assumes a capital structure of 45% debt and 55% total equity for AT&T. (See paragraph 91)
7	*Granted.* Our decision finds that a total equity return of 10.5% is reasonable for Bell. (paragraphs 79–84)
8	*Granted.* Our decision concludes that the minimum allowable rate of return on Bell's interstate (and foreign) operations is 8.5%. (See paragraphs 104–107)
9	*Granted.* Our decision adopts a range of 8.5%–9.0%. (See paragraph 107)
11	*Denied.* Record does not support 12.0%–12.5% as the cost of Bell's equity. (See paragraphs 58–84)
12	*Denied.* Record does not support a finding that Bell is entitled to a rate of return in the range of 9.3%–9.6%. (See paragraphs 54–107)

E. *Commonwealth of Pennsylvania (Pa.).*

Exception No.	*Ruling*
1	*Denied.* The failure of the Initial Decision to refer specifically to the briefs of Pa. does not mean that the contentions of Pa. were ignored. We have considered them in our decision. (See paragraphs 30, 39)
2	*Denied.* The record does not support Pa.'s request for a "maximum rate of return of 8.0% for AT&T." (See paragraphs 54–107)
3	*Denied.* The record does not support Pa.'s requested finding of a rate of return range of 7.5%–8.0%. (See paragraphs 54–107)

F. *United States Independent Telephone Association (USITA).*

Exception No.	*Ruling*
1 and 2	*Granted.* We state in our decision that the interstate tariff rates under investigation in Docket 19129 are also those of independent telephone companies. (See paragraphs 1–2)
3	*Granted.* Our suspension orders also apply to the interstate rates of independent companies. (See paragraph 3)
4	*Denied.* The mere failure of the Initial Decision to refer specifically to the testimony of USITA does not mean it was not considered by the Examiner. We have given appropriate weight and consideration to such testimony in our Decision. (See paragraphs 29, 39, Appendix C)
5	*Denied.* The Examiner was relying upon our 1967 ruling in Docket 16258 that the earnings of manufacturing companies do not provide a useful or reliable basis for determining Bell's allowable rate of return. (9 FCC 2d 30, at page 79)
6	*Granted* to the extent that the Initial Decision rejects all comparison of AT&T earnings with those of electric utilities. We find that it is proper to utilize comparisons of AT&T and regulated electrics insofar as overall earnings and allowable return are concerned. (See paragraphs 66–67)
7	*Granted.* We apply a debt ratio of 45% in our Decision. (See paragraphs 85–89)
8	*Granted.* We find that Bell is entitled to a minimum return of 10.5% on its total equity. (See paragraphs 58–84)

Exception No.	*Ruling*
9	*Granted.* We allow a minimum return of 8.5% on Bell's total interstate and foreign operations. (See paragraphs 90–107)
10	*Granted.* We allow a range of return of 8.5%–9.0% on the rates designed to produce 8.5%. (See paragraph 107)
11–13	*Denied.* The proffered evidence on the earnings requirements of independent telephone companies was properly rejected as not relevant to the sole issue in Phase I on Bell's allowable rate of return.

G. *Secretary of Defense.*

Exception No.	*Ruling*
1 and 3	*Granted.* We find that current economic events indicate Bell's long term debt costs range between 7.25%–7.50%. (See paragraphs 55–57; Appendix B, paragraphs 14–15)
2	*Denied.* Bell's past policies on capital structure were appropriately considered in our 1967 Decision in Docket 16258. (See paragraph 94)
4	*Denied.* The record does not support a finding that a rate of return of 8.0% for Bell's total interstate operation is adequate.
5	*Granted.* The record supports the conclusion that Bell is entitled to a minimum return of 8.5%.
6	*Denied.* The contention that Bell is not entitled to any increase in allowable rate of return is unsupported by the record.
7 and 8	*Denied.* The record does not support a finding that Bell's long-term interest costs will significantly decline in the immediately foreseeable future from the 7.25%–7.50% range we have found or that Bell's stock prices can be expected to rise significantly in the absence of any increase of allowable rate of return.
9 and 10	*Denied.* The record will not support the findings implicit in these exceptions that Bell's poor stock market performance in 1965–1970 was due entirely to factors other than inadequate earnings.
11	*Denied.* We have found that some comparisons can be made between AT&T and the regulated utilities. (See paragraph 67)
12	*Denied.* We appropriately treated Bell's past debt ratio policy in our Decision in Docket 16258 and have considered it in our Decision herein. (See paragraphs 89, 94)
13	*Denied.* Record adequately supports Bell's claims for need to raise substantial amounts of capital in the immediately foreseeable future.
14 and 15	*Denied* as of no decisional significance in view of our use of 8.0% as the earnings level to compute additional interstate revenue requirements. (See paragraphs 115–121)

H. *City of Chicago.*

Exception No.	*Ruling*
1 and 2	*Denied.* Record does not support finding that Bell's rate of return shall be 8.2%
3	*Granted* to the extent that we find the minimum allowable return to be 8.5%.
4 and 5	*Denied.* Record does not support a finding that the range of return for Bell should be 7.9%–8.2%.

I. *GTE Service Corporation.*

Exception No.	*Ruling*
1 and 2	*Denied.* Rejected testimony related to matters not relevant to the sole issue herein of Bell's rate of return on interstate (and foreign) operations.

Exception No.	*Ruling*
3 and 4	*Denied.* Exception is of no decisional significance since lack of specific references in the Initial Decision to all witnesses or their testimony does not mean that their testimony was not considered.
5 and 7	*Granted* to the extent that we summarize the testimony of witnesses Foster and Ryan in our Decision (See paragraph 29, Appendix C, paragraph 1.); and otherwise denied as of no decisional significance. We have given careful consideration to the evidence presented by these witnesses.
6	*Denied.* Record supports finding that Bell is not entitled to a 12.5% return on equity.
8	*Denied.* Bell is currently making greater use of short-term and intermediate term debt.
9	*Denied.* The record supports the rejection of the updated Gordon model results. (See paragraph 62)
10	*Granted.* Certain limited comparisons are permissible between Bell and regulated electrics. (See paragraph 67)
11	*Denied.* Exception is not explicit as to alleged error. (See 1.277 of rules)
12 and 15	*Granted.* Record will not support a positive finding as to what the minimum point spread should be. (See paragraph 73)
13	*Granted.* Record does not support use of 48% debt ratio for Bell.
14	*Granted* insofar as it objects to finding of 8.25% return and 10.3% return on equity; *Denied* as to claim of 9.5% return.
16	*Denied.* Bell should be able to attract capital at reasonable costs under the minimum 8.5% return we allow.
17	*Granted* to the extent indicated in paragraphs 74–92; *Denied* otherwise as of no decisional significance.
18 and 19	*Denied* for the reasons indicated in paragraphs 76–78.
20	*Denied.* Record does not support a finding that Bell is entitled to a 9.5% return.

J. *Trial staff.*

Exception No.	*Ruling*
General Exception to failure to take into account New Economic Policy	
1, 2, 3, 4, 5, 6 and 7	*Granted* in Part as set forth in paragraphs 19 and 116 and Appendix B, paragraphs 14 and 15; *Denied* in Part as set forth in paragraphs 106 and 107.
Specific Exceptions	
8 and 9	*Denied* as set forth in paragraphs 91 and 107.
10 and 11	*Granted* in Part and *Denied* in Part as set forth in paragraphs 75–82.
12 and 13	*Denied* as set forth in paragraph 70.*
14, 15, 16, 17, and 18	*Denied* as set forth in paragraphs 101–103.
19, 20, 21, 22, and 23	*Denied* as set forth in paragraphs 106 and 107.
24, 25, 26, 27, and 28	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.

*However, it should be noted that the Examiner erred in incorporating by reference portions of proposed findings of parties. The intent of our procedural rules is that the Initial Decision itself shall contain all findings without the need to refer to other documents for the complete findings. 47 C.F.R. 1.267(b).

Exception No.	*Ruling*
29, 30, 31, 32, 33, 35, and 36	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.
No Exception 34 shown.	
37	*Denied* as set forth in paragraphs 93, 98–100.
38, 39	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.
40	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.
41 and 42	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.
43 and 44	*Denied* in Part and *Granted* in Part as set forth in paragraphs 93, 98–100.
45 and 46	*Granted* in Part and *Denied* in Part as set forth in paragraph 116.
47 and 48	*Granted* in Part and *Denied* in Part as set forth in paragraph 116.

K. *Bell System.*

Exception No.	*Ruling*
1	*Denied*—Record does not support finding of 9.5% as allowable return for Bell.
2	*Granted*—UTS filed proposed findings.
3	*Denied*—Record supports facts found as to Dr. O'Leary's relationship to Bell.
4	*Denied* as of no decisional significance on Phase I rate of return issue.
5	*Granted*—Bell's embedded debt cost in 1966 was 4%.
6, 8	*Granted*—Bell did claim 12.5% return on equity.
7	*Denied* for failure to refer to any evidence of record. Reference only to proposed findings not permissible under rules. *Veteran Broadcasting Co., Inc. et al.* 29 F.C.C. 1105; 1107.
9	*Granted*—Trial Staff recommended more gradual movement by Bell to 50% debt ratio.
10–11	*Denied*—Record supports rejection of Bell's claim that it is entitled to earn 12.5 to 13.0% on equity.
12, 13, 14	*Granted* to the extent that our Decision re-states Mr. McDiarmid's testimony in Appendix A; otherwise *Denied*.
15	*Granted*—Examiner erred in incorporating by reference paragraphs from proposed findings. Initial Decision itself is required to include all findings and conclusions of the Examiner. (Sec. 1.267(b) of rules.)
16	*Denied* for the reasons set forth in paragraphs 60 through 73 of the Decision.
17	*Denied*—Exception does not point out with particularity the alleged error. (Sec. 1.277 of the rules.)
18	*Denied*—Record supports Examiner's findings.
19	*Granted* to the extent Appendix A of our Decision re-states Mr. Baldwin's testimony; *Denied* in all other respects as of no decisional significance.
20	*Denied*—Examiner's findings of fact are supported by the record. However, the conclusions to be drawn are modified by our Decision (paragraphs 58–84).
21	*Denied* as of no decisional significance.
22	*Denied* for the reasons stated in paragraph 73 of Decision.
23, 24, and 25	*Granted* to the extent indicated in paragraphs 63–65 of Decision; *Denied* otherwise as of no decisional significance.
26 and 27	*Granted*—Record does not support findings objected to.
28	*Denied*—Record supports finding of Examiner.
29	*Denied*—Record supports Examiner's finding.

Exception No.	*Ruling*
30	*Denied*—Record supports Examiner's findings. (See also paragraphs 64–65).
31	*Granted* in part as indicated in paragraphs 64 and 65 of Decision; *Denied* otherwise as of no decisional significance.
32, 33, and 34	*Granted*—Record supports findings requested by Bell.
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.	*Denied*—Record supports substance of findings of Examiner.
46 and 47	*Granted*—Findings requested by Bell are supported by the record.
48 and 49	*Denied* as based upon misinterpretation of paragraph 48 of the I. D.
50, 51, 52, 53, 54, and 55.	*Denied* for the reasons that the Findings of Examiner are supported by the record and facts officially noticed and for the reasons set forth in paragraph 67 of the Decision.
56	*Denied* as not stating with particularity the error complained of.
57	*Denied*—Findings of Examiner, in substance, are supported by the record.
58	*Denied* as misinterpretation of findings; *Granted* with respect to fact that Moody does not rate the common stocks of utilities.
59	*Granted*—Record supports requested correction.
60	*Denied* for not stating what additional findings are requested.
61–62	*Granted*—Record supports additional findings requested by Bell.
63	*Denied* as a misinterpretation of findings. However, Examiner erred in incorporating by reference portions of proposed findings. (1.267(b) of rules).
64	*Denied*—Record and Bell's proposed findings support Examiner's findings.
65	*Granted*—Record supports corrections requested by Bell.
66 and 67	*Granted*—to the extent set forth in paragraph 70 of the Decision and Order; *Denied* otherwise as of no decisional significance.
68, 69, and 70	*Granted*—The additional findings requested by Bell are supported by the record.
71 and 72	*Denied* as unsupported by the record and for the reasons set forth in paragraphs 58 through 78 of the Decision.
73 and 74	*Denied* as unsupported by the record and for reasons set forth in paragraphs 61 and 62 of the Decision.
75	*Denied*—Findings of Examiner, in substance, are supported by the record.
76	*Granted*—Additional findings requested by Bell are warranted by the record.
77 and 78	*Denied*—Findings of Examiner are, in substance, supported by the record.
79, 80, 81, 82, and 83.	*Granted*—Corrections and added findings requested by Bell are supported by the record.
84	*Granted* to the extent set forth in paragraphs 74 through 84 of Decision; *Denied* otherwise as of no decisional significance.
85	*Granted* to the extent set forth in paragraphs 29, 39, 104 and Appendix C; *Denied* otherwise as of no decisional significance.
86–88, 91–94, 99	*Granted* to the limited extent indicated in paragraphs 71–78 and Appendix B; *Denied* otherwise as of no decisional significance.
89	*Denied* for improper citation to proposed findings of Bell and for misinterpretation of Examiner's findings.
90	*Denied*—Record supports minimum overall return allowance of 8.5%.

Exception No.	Ruling
95	*Granted* additional finding resquested by Bell is warranted.
96	*Denied*—Not supported by the record and erroneously relies only on proposed findings.
97	*Denied* as misinterpretation of Examiner's findings.
98	*Denied*—Examiner's finding is supported by the record.
100, 101, 102, 103, 104, 105, 107, 108, 109, and 111	*Granted* to the extent indicated in paragraphs 71 through 78, 80 through 84 and Appendix B of the Decision; *Denied* otherwise as of no decisional significance.
106	*Denied* as erroneously referring only to proposed findings of Bell.
110	*Granted*—Findings of Examiner not supported by the record.
112	*Denied*—for reasons set forth in paragraphs 63, 65 and 67 of the Decision.
113 and 114	*Denied* as misinterpretating findings of Examiner.
115	*Denied*—Finding is supported by the record.
116, 117, and 118	*Granted*—Findings complained of are not supported by the record or incomplete and additional findings requested by Bell are warranted.
119	*Denied* as based on misinterpretation of finding.
120	*Granted* to the extent set forth in paragraphs 76–78 of the Decision; *Denied* otherwise as of no decisional significance.
121	*Granted* to the extent set forth in paragraphs 85 through 89 of the Decision; *Denied* otherwise as of no decisional significance.
122	*Denied*—Findings objected to are supported by the record.
123	*Denied* as a misinterpretation of finding.
124 and 125	*Granted* to the extent indicated in paragraphs 85–91 and Appendix A of the Decision; *Denied* otherwise as of no decisional significance.
126, 127, 128, and 129	*Denied* as based upon inaccurate interpretations of findings of Examiner.
130	*Granted*—Correction requested by Bell is warranted.
131	*Denied*—Record does not support Bell's claim for 9.5% return.
132, 133, 134, 135, 136, and 137	*Denied* as based upon inaccurate or unwarranted interpretations, assumptions and implications of Examiner's findings.
138, 139, 140, 141, 142, 143, 144, and 145	*Granted* to the extent that the Examiner erroneously incorporates by reference paragraphs from proposed findings "to the extent of factual data set forth" therein and to the extent set forth in paragraphs 93 through 100 of Decision; *Denied* otherwise as of no decisional significance.
146	*Granted*—The corrections and additional findings requested by Bell are warranted.
147, 148	*Granted*—Examiner erroneously incorporates by reference paragraphs of the Proposed Findings with confusing qualifications such as "If the rhectoric is eliminated" and "Minus the Staff's verbal charactizations and the sarcasm". (See Sec. 1.267(b) of the rules).
149, 150, 151, and 152.	*Granted*—The record supports Bell's requested corrections and additional findings.
153	*Denied*—Examiner accurately states position of Trial Staff.
154	*Denied* as moot.
155	*Denied*—Record will not support conclusion that Bell is entitled to 9.5% overall rate of return.
156	*Granted*—Record does not support Examiner's conclusion of a "range" of fair return of 7.9–8.8%.
157	*Granted*—Record does not support conclusion of Examiner.

Exception No.	*Ruling*
158	*Granted* to the extent indicated in paragraph 73 of the Decision; *Denied* otherwise as supported by the record.
159	*Granted*—Record does not support conclusions objected to.
160	*Granted*—Conclusion not supported by record.
161, 162, 163	*Denied* as based upon misinterpretation of Examiner's conclusion.
164, 165	*Granted* to the extent set forth in paragraphs 79–84, 104–107 of Decision; *Denied* otherwise as of no decisional significance.
166, 167, 168	*Denied* as moot.
169	*Denied*—Record does not support Bell's claim for a 9.5% return.
170	*Denied* as of no decisional significance.
171	*Granted*—Finding not supported by the record.
172	*Granted* to the extent set forth in paragraphs 122–124; *Denied* otherwise for all the reasons stated in our Decision.
173	*Denied*—Improperly refers only to Proposed Findings of Bell.

L. *Telephone Users Assn., Inc. (TUA).*

Exception No.	*Ruling*
1	*Denied*—Exception refers only to proposed findings. (Sec. 1.277 of the rules)
2	*Denied*—for all the reasons set forth in our Decision.

F.C.C. 72R–375

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In Re Applications of	
BETHANY COLLEGE, NONCOMMERCIAL EDUCATIONAL FM STATION, WVBC, BETHANY, W. VA.	Docket No. 19573 File No. BPED–1109
CALVARY CHRISTIAN COLLEGE, PARIS, OHIO For Construction Permits	Docket No. 19574 File No. BPED–1278

MEMORANDUM OPINION AND ORDER

(Adopted December 12, 1972; Released December 15, 1972)

BY THE REVIEW BOARD:

1. This proceeding was designated for hearing by Commission Order, FCC 72–812, 37 FR 20054, published September 23, 1972, under various issues, including an issue to determine whether Calvary Christian College (Calvary) has funds available in an amount of $12,295 for estimated costs of construction and first-year's operation. Now before the Review Board is a petition to enlarge issues, filed October 10, 1972, by Bethany College (Bethany) [1] seeking modification of the financial issue to encompass an inquiry into several of Calvary's estimated costs, and addition of an issue to determine whether Calvary is eligible to receive the construction permit for which it has applied.

2. In its petition, Bethany first questions Calvary's estimate of $4,070 for first-year's operating costs, alleging that it (petitioner) has estimated a substantially higher amount; that Calvary will need a full time first-class engineer and its allocation of $2,000 to meet this expense is insufficient; that Calvary will need, but has not provided for, a paid general manager or station manager and other staff personnel; and that Calvary has made no provision for taxes, insurance, BMI or ASCAP fees, promotion or programming expenses. However, as pointed out by the Broadcast Bureau in its comments, the fact that Bethany's estimate for operating costs is higher does not, of itself, raise a question as to the sufficiency of the amount budgeted by its opponent,[2] and the Commission's Rules do not require Calvary to employ a full-time first-class engineer. See Rule 73.565(b). Moreover, petitioner's allegations that Calvary will need a paid general manager and staff, and that it will incur additional expenses for taxes, insurance, promotion, etc. are not substantiated by affidavits from persons with personal knowledge and must therefore be rejected.[3] Petitioner

[1] Comments on the petition were filed by the Broadcast Bureau on October 25, 1972. No responsive pleading was filed by Calvary.

[2] *Cf. Eastern Broadcasting Corp.*, 28 FCC 2d 28, 21 RR 2d 417 (1971); and *Marbro Broadcasting Co., Inc.*, 2 FCC 2d 1030, 7 RR 2d 216 (1966).

[3] See Section 1.229(c) of the Rules. *Cf. Eastern Broadcasting Corp., supra;* and *Community Broadcasting Co. of Hartsville*, 16 FCC 2d 647, 15 RR 2d 814 (1967).

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next challenges Calvary's estimate for "other costs", alleging that Calvary will need additional funds for legal and engineering expenses, and for constructing its proposed studio and transmitter. While Bethany's allegations as to costs for studio and transmitter must be rejected since they are unsubstantiated, we agree with petitioner that, in light of the fact that Calvary has retained an attorney and an engineer, it is incumbent on the applicant to explain its failure to include any allotment of funds (other than $500 for "misc. expenses") for their fees within its estimated costs. The existing financial issue will therefore be modified to encompass an appropriate inquiry.[4] Finally, absent more specific allegations and supporting affidavits, we cannot accept petitioner's assertion that Calvary will be unable to obtain the used equipment it proposes to utilize.

3. Petitioner's request for an issue to determine whether Calvary is eligible to receive a construction permit for an educational FM station will be denied. As noted by the Bureau, this matter was thoroughly considered by the Commission in the designation Order, and under the policy set forth in *Atlantic Broadcasting Co.* (*WUST*), 5 FCC 2d 717, 8 RR 2d 991 (1966), the Review Board is bound by that determination. The only new circumstance relied on by Bethany is a letter from a Congressman, wherein it is asserted that Calvary "does not really exist." This unsworn assertion is clearly not specific enough to raise a substantial question warranting an evidentiary inquiry into this matter.

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed October 10, 1972, by Bethany College IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and

5. IT IS FURTHER ORDERED, That Issue No. 1, as specified in the designation Order, FCC 72–812, released September 20, 1972, IS AMENDED to read as follows:

1. To determine with respect to the application of Calvary Christian College:

(a) The amount and basis of the applicant's estimated costs for legal and engineering services; and

(b) Whether funds in the amount of $12,295, plus any additional funds found to be necessary under subissue (a), will be available for the construction and first-year operation of the proposed facility; and

(c) Whether, in light of the evidence adduced under the above issue, the applicant is financially qualified.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[4] *Cf. Community Broadcasters, Inc.*, 33 FCC 2d 714, 23 RR 2d 723 (1972).

F.C.C. 72-1105

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re BROKEN ARROW CABLE TELEVISION, BROKEN ARROW, OKLA. For Certificate of Compliance	CAC-95 OK065

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 18, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On March 31, 1972, Broken Arrow Cable Television filed an application for Certificate of Compliance for a new cable television system at Broken Arrow, Oklahoma. The proposed system was to operate with 27 channel capacity and offer the following television signals:

KTEW (NBC), Tulsa, Oklahoma
KOTV (CBS), Tulsa, Oklahoma
KTUL-TV (ABC), Tulsa, Oklahoma
KOED-TV (Educ.), Tulsa, Oklahoma
KTVT (Ind.), Ft. Worth, Texas
KBMA-TV (Ind.), Kansas City, Missouri [1]

This application is opposed by Leake TV, Inc., licensee of Station KTUL-TV, Tulsa, Oklahoma and Corinthian Television Corporation, licensee of Station KOTV, Tulsa, Oklahoma, and Broken Arrow has replied. On August 24, 1972, Broken Arrow filed an Amendment to its application.

2. In its objection Leake alleges: (a) that Broken Arrow is planning to carry more than two distant signals on a regular basis; (b) that this is being accomplished by proposing carriage of KBMA-TV which does not operate full time at present in lieu of an available station (such as KDTV, Dallas) which would not leave time for substitutions; (c) that Broken Arrow's franchise does not comply with the requirements of Section 76.31 of the Commission's Rules since: (1) it is to continue in effect until revoked; (2) the franchise fee ranges from 4% to 6% (with additional costs for furnishing free service) and yet there is no showing that (i) Broken Arrow can pay it and maintain other services, or (ii) that any city regulatory program justifies the fee; (d) that Broken Arrow may have overcommitted its channel capacity. In its objection, Corinthian argues (to the extent its arguments do not duplicate Leake's): (e) that (similar to (a) and (b) above), Broken Arrow should not be allowed to present other signals

[1] When KBMA-TV was not on the air, Broken Arrow planned to carry programs from KDTV (Ind.), Dallas, Texas, or KPLR-TV (Ind.), St. Louis Missouri.

when KBMA–TV is not broadcasting: (f) that Broken Arrow has not alleged that its franchise was adopted after a full public proceeding affording due process; (g) that the franchise does not provide for a public proceeding before rates can be changed; (h) that the franchise makes no significant provision for investigation and resolution of complaints; (i) that the franchise makes no provision for changes made necessary by changes in this Commission's requirements; (j) that there is no construction timetable and possibility of abuse exists in in determining where significant construction will take place; (k) that there is no detailed showing of how the Commission's access standards will be satisfied; and (l) that Broken Arrow has not indicated that it intends to comply with the Commission's new syndicated exclusivity rules.

3. We rule on the objections as follows: (a) (b) (e) these issues have been mooted by Broken Arrow's amendment of August 24, wherein it deleted its request for certification of KBMA–TV, and instead requested certification of KDTV; (c) (1) Broken Arrow states that it will accept a certificate of compliance containing a 15 year term, renewable only upon recertification by the franchising authority. We find this offer to be acceptable, and therefore proceed on the understanding that Broken Arrow will voluntarily seek franchise renewal by June 25, 1986, *LVO Cable of Shreveport-Bossier City*, FCC 72–954, — FCC 2d —; (2) the discrepancy in the franchise fee is not so great as to bar the franchise (granted January 31, 1972) from being approved as in "substantial compliance" within the meaning of Par. 115, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 366; see, *CATV of Rockford*, FCC 72–1005, — FCC 2d —; (d) this argument is entirely hypothetical since its assumes without apparent basis that Broken Arrow will first direct its channel capacity to uses other than those required by our rules. As a practical matter, we do not believe it likely that Broken Arrow will so quickly run through its 27 channels of capacity. And even assuming arguendo that it did, there is not reason to think it could not expand its channel capacity as contemplated by our rules; (f) Broken Arrow has supplied information to establish that the franchise was issued only after a public proceeding; (g) the franchise mechanism for rate changes is that the cable operator may file a proposal which the city may disapprove after a public hearing if it wishes. This appears adequate protection for the public under the circumstances; (h) Broken Arrow states that it has established and will maintain an office in Tulsa so that maintenance service will be promptly available to its subscribers. Further, the franchise (in its "Standards of Good Engineering Practice") requires Tulsa Cable to investigate and dispose of all customer complaints; (i) Broken Arrow states that—if the Commission modifies Section 76.31 of the Rules in a manner inconsistent with its permit—it will "apply to the franchising authority so as to secure within one year of adoption of the modification or upon renewal of its permit, whichever occurs first, a modification of its permit consistent with the Section 76.31 modification." As in (c) (1), above, we find this offer to be acceptable and proceed upon the basis of this express representation; (j) Broken Arrow is required by its franchise to commence construction within 30 days of receipt of all necessary authorizations, and

to complete construction on or before the commencement of operation of the cable television system in Tulsa, (authorized in *Tulsa Cable Television* FCC 72–1011. While this timetable does not formally correspond to the literal requirements of Section 76.31(a)(2) of the Rules (which requires a "significant" amount of construction within one year of certification), it assures completion of construction in less time than required by the Commission's rules. In these circumstances, we can see no reason to object to the technical variation in terms when the net effect is completely consistent with our policies; (k) the specific objection—that there is no specially designated channel for local government uses—has been resolved by the August 24 amendment which provides for such a channel. And the more general objection—that more specific plans should be provided for access channels—seems premature at best; and (l) the Commission's rules do not require the requested assurance and no good reason is given to show that it should be sought. In summary, our review of Broken Arrow's proposal persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection to Certification" filed May 15, 1972, by Leake TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Objection of Corinthian Television Corporation Pursuant to Section 76.17" filed May 12, 1972, IS DENIED.

IT IS FURTHER ORDERED, That Broken Arrow Cable Television's application (CAC–95), IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1148

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART K OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS WITH RESPECT TO PERFORMANCE TESTS AND TECHNICAL STANDARDS FOR CABLE TELEVISION SYSTEMS	Docket No. 19659

NOTICE OF INQUIRY AND PROPOSED RULEMAKING

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE CONCURRING IN THE RESULT.

1. We have this day postponed the initial deadline for compliance with the cable television performance tests of Section 76.601(c) of our Rules. As a related matter, there seems to be a need to investigate alleged difficulties borne by smaller cable systems that must also comply with Section 76.601(c). It has been argued that, for some systems, even a modest charge for conducting the performance tests represents a significant portion of the systems' gross revenues. Assuming these systems were able to afford their own testing equipment, it is further argued that their personnel lack the expertise to use the equipment properly. We have received many suggestions, ranging from exempting systems of some designated size from compliance with the performance tests, to formulating a more simplified set of technical standards and testing procedures for small systems.

2. Although the Commission understands that compliance with the new technical standards and performance test rules will be burdensome for some cable systems, the time has come when there simply must be assurance that subscribers will receive a worthwhile product. The Commission receives hundreds of subscriber complaints each year, many from subscribers to smaller cable systems. It would hardly be in the public interest to ignore obvious service problems, and it is not expected that we will exempt any class of cable system from compliance with our technical standards.

3. It does appear appropriate, however, to take the opportunity afforded by the one year postponement of the performance test deadline to initiate an inquiry and rulemaking proceeding to determine to what extent, if any, special problems borne by smaller systems might be alleviated. It is envisioned that this proceeding will terminate well before the new December 31, 1973 deadline to give affected systems ample time to comply with our rules. We request comment with respect to the following matters:

1. What is a "smaller" cable television system in the context of the questions we are here raising? Should size be measured in terms of number of subscribers, annual gross revenue, miles of cable plant, or in some other manner?

2. Are there modifications of our existing technical standards or performance test requirements that might reduce the burden on smaller systems while at the same time assuring a reasonable level of quality service to subscribers?

3. What further steps can be taken to ease compliance with Sections 76.601(c) and 76.605 and be of particular help to smaller cable systems?

4. Pursuant to applicable procedures set out in Section 1.415 of the Commission's Rules, interested parties may file comments on or before February 28, 1973, and reply comments on or before March 28, 1973. All relevant and timely comments and reply comments will be considered before final action is taken in this proceeding. The Commission, additionally, in reaching a decision in this proceeding, may also take into account other relevant information before it.

5. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-367

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WILLIAM A. CHAPMAN AND GEORGE K. CHAPMAN, D.B.A. CHAPMAN RADIO & TELEVISION CO., HOMEWOOD, ALA.	Docket No. 15461 File No. BPCT-3282
ALABAMA TELEVISION, INC., BIRMINGHAM, ALA.	Docket No. 16760 File No. BPCT-3706
BIRMINGHAM BROADCASTING CO., BIRMINGHAM, ALA.	Docket No. 16761 File No. BPCT-3707
For Construction Permit for New Television Broadcast Station	
BIRMINGHAM TELEVISION CORP. (WBMG), BIRMINGHAM, ALA.	Docket No. 16758 File No. BPCT-3663
For Modification of Construction Permit	

MEMORANDUM OPINION AND ORDER

(Adopted December 8, 1972; Released December 12, 1972)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. This proceeding involves the applications of Chapman Radio and Television Company (Chapman), Alabama Television, Inc. (Alabama Television), Birmingham Broadcasting Company (BBC) and Birmingham Television Corporation (WBMG) for authorization to construct a new UHF television broadcast station. The Administrative Law Judge released a Supplemental Initial Decision,[1] FCC 71D-20, on April 27, 1971, in which he concluded that grant of Alabama Television's application was warranted. Presently before the Review Board is a joint petition to enlarge issues, filed April 27, 1972, by BBC and WBMG, requesting enlargement of issues to include a misrepresentation issue against Alabama Television.[2]

2. The critical facts are as follows. On March 12, 1971, the United States filed a civil complaint against Joseph Engel and George J. Mitnick, principals of Alabama Television, and three other defendants, alleging that they had discriminated against persons in the rental of apartments because of racial considerations. In response the defendants

[1] The following is a brief recitation of the history of this proceeding prior to the release of the Supplemental Initial Decision. The proceeding was designated for hearing by Order, FCC 66-636, released July 20, 1966. On August 30, 1968, an Initial Decision was released recommending grant of the application of Alabama Television under the comparative issue (19 FCC 2d 185, 14 RR 2d 6); the Review Board affirmed the Presiding Judge's ultimate resolution of the proceeding (19 FCC 2d 157, 17 RR 2d 60, reconsideration denied 20 FCC 2d 556, 17 RR 2d 1028). By Order, FCC 70-744, 24 RR 2d 282, released July 13, 1970, the Commission, *Inter alia*, granted a petition for enlargement of issues; the proceeding was thus remanded for the preparation of a Supplemental Initial Decision under various additional issues.

[2] Other related pleadings before the Board for consideration are: (a) Broadcast Bureau's comments, filed May 10, 1972; (b) opposition, filed May 11, 1972, by Alabama Television; and (c) reply, filed May 18, 1972, by BBC and WBMG.

filed an Answer which contained the following specific denial of paragraph 4 of the Complaint:[3]

> 4. These defendants and each of them admit that the Spanish Villa Apartments, located at 4009 Old Shell Road, Mobile, Alabama, contain ninety-six (96) apartments. These defendants and each of them deny that none of the said apartments had ever been rented to or occupied by Negroes. On the contrary, these defendants aver that one or more of said apartments is, as of the date hereof, occupied by one or more Negroes. . . .

In light of the civil complaint BBC and WBMG filed a joint petition on May 21, 1971, seeking the enlargement of issues by the addition of a character qualifications issue against Alabama Television.[4] In response to this petition, Alabama Television, on June 3, 1971, filed an opposition to which it attached a copy of the Answer which had been filed in District Court; the applicant asserted that the answer, among other things, constituted "further substantiation of the unwarranted nature of the charges lodged against (the defendants). . . ." BBC and WBMG allege that the submission of this answer in conjunction with its opposition constitutes lack of candor on the part of Alabama Television, since paragraph 4 of the answer indicates that Negroes were, or had been, tenants of the apartment complex in question when, in fact, there have never been any such Negro tenants. In support of this contention the joint petitioners note that on September 20, 1971, they acquired a portion of a deposition taken in the course of the civil proceeding; in that deposition, Mr. James F. Reddock, a co-defendant in the civil proceeding denied that there had ever been Negro tenants in the Spanish Villa Apartments. Additionally, BBC and WBMG note, the applicant informed the Commission on November 4, 1971, in an opposition to a petition for a Section 403 inquiry, that there had never been Negro tenants at the Spanish Villa Apartments, but rather only live-in domestic Negro servants.

3. The request for the addition of a misrepresentation issue will be denied. As noted by the Broadcast Bureau, the joint petition was filed inexcusably late, long after the petitioners became apprised of the facts underlying the instant request,[5] and they have presented absolutely no explanation of, or showing of good cause for the delay in filing. Moreover, under the circumstances here, BBC and WBMG have failed to establish that a misrepresentation issue is warranted. There is no indication that Alabama Television submitted a copy of the Answer to the Commission as a means of proving or disproving the precise facts and circumstances surrounding the operation of the Spanish Villa Apartments. Rather, the specific denial contained in

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[3] The complaint reads in pertinent part:
"4. The Spanish Villa Apartments, located at 4009 Old Shell Road, Mobile, Alabama, contain 96 apartments, none of which is or has eve(r) been, rented to or occupied by Negroes. . . ."

[4] Specifically, the joint petitioners sought the following issue:
To determine in light of all the facts and circumstances surrounding the Complaint of the United States Attorney General, whether George J. Mitnick and Joseph Engel and consequently Alabama Television, Inc., are qualified to own and operate a television broadcasting station in Birmingham, Alabama.

[5] As indicated above, the petitioners acquired a portion of a deposition, which suggested the inconsistency to BBC and WBMG, on September 20, 1971, some 8 months prior to filing this petition. Two months later a pleading which they allege substantiates their contention was filed in response to their request for a Section 403 inquiry before the Commission. Later the question of the possible misleading nature of Alabama Television's pleading was discussed during oral argument before the Review Board on January 25, 1972, four months prior to filing this petition.

paragraph 4 of the defendants' Answer was implicitly predicated on a legal interpretation of what the defendants believed constitutes violation of a Federal statute. In short, we do not believe that a misrepresentation issue can fairly be specified in this case, based on one selected portion of the legal defense to a complaint brought in the Federal courts.

4. Accordingly, IT IS ORDERED, That the joint petition to enlarge issues, filed April 27, 1972, by Birmingham Broadcasting Company and Birmingham Television Corporation (WBMG), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-379

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC), NEW YORK, N.Y.	Docket No. 11227
For Special Service Authorization to operate additional hours from 6 a.m. (e.s.t.) to sunrise, New York, N.Y., and from sunset, Minneapolis, Minn., to 10 p.m. (e.s.t.)	File No. BSSA-266
CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC), NEW YORK, N.Y.	Docket No. 17588
	File No. BP-16148
MIDWEST RADIO-TELEVISION, INC. (WCCO), MINNEAPOLIS, MINN.	Docket No. 19403
	File No. BP-19151
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 15, 1972)

BY THE REVIEW BOARD: BOARD MEMBER NELSON NOT PARTICIPATING.

1. Before the Review Board is a petition to enlarge issues, filed by the Broadcast Bureau on August 2, 1972, requesting the addition of an issue in the above captioned proceeding to determine whether the 50 kilowatt proposal of the City of New York Municipal Broadcasting System (WNYC) would provide adequate daytime and nighttime coverage of New York City, as required by Rule 73.188(b)(2).[1,2]

2. The Review Board finds that good cause exists for accepting the Bureau's petition because WNYC did not, until coverage maps were made available on July 27, 1972, clearly depict the proposed 50 kw coverage in relation to the boundaries of New York City. We therefore cannot agree with WNYC that the petition must be denied because of untimely filing. *Great River Broadcasting, Inc.*, 11 FCC 2d 333, 12 RR 2d 130 (1968); *Chicagoland TV Co.*, 5 FCC 2d 154, 155, 8 RR 2d 71, 73 (1966).[3] Moreover, provision of a premium grade signal to the principal city has long been held an important public interest consideration (*The Greenwich Broadcasting Corporation*, 36 FCC 1294 at 1307-08, 2 RR 2d 548, 566 (1964)), and WNYC's most recent exhibits reveal that substantial portions of the Borough of Queens would not be within the 50 kw proposed 5.0 mv/m contour and the nighttime interference-free contours. WNYC's argument that the reduction in coverage would have been less if the FCC Figure M-3 conductivities

[1] Rule 73.188(b)(2) specifies that "a minimum filed intensity of 5 to 10 mv/m will be obtained over the most distant residential section.

[2] Also before the Board are: an opposition, filed by WNYC on August 15, 1972, and the Bureau's reply, filed August 24, 1972.

[3] The cases cited by WNYC in its opposition do not hold otherwise.

had been used for the WNYC 1 kw and 50 kw operations is irrelevant, since the valid measurements made on WNYC's 1 kw operation take precedence over Figure M–3 computations. See Rule 73.183(c).[4] As adequately detailed by the Bureau, WNYC's stated aim is to provide better service to all of New York, and the Bureau's petition raises a substantial question as to the extent to which this goal will be achieved by the subject proposal which can best be resolved in the evidentiary proceeding. In view of the foregoing, the Board will add the requested issue with a slight modification to encompass a determination of compliance with Rule 73.30(c) in order that all pertinent evidence may be adduced.[5]

3. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed August 2, 1972, by the Broadcast Bureau, IS GRANTED, and that the issus ARE ENLARGED to include the following issue:

To determine whether Station WNYC's 50 kw proposal would provide coverage of the city of New York as required by Section 73.188(b) (2) and Section 73.30(c) of the Commission Rules, the extent of gain and loss of such coverage when compared with its present 1 kw and SSA operations, and, if there is such a violation, whether circumstances exist which would warrant a waiver of these sections.

4. IT IS FURTHER ORDERED, That the burden of proceeding and the burden of proof under the issue added herein SHALL BE upon the City of New York Municipal Broadcasting System (WNYC).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] This rule requires the use of M–3 conductivities in the absence of measurement data.
[5] The Bureau did not include Rule 73.30(c) in its recommended issue. This rule requires primary coverage of the entire principal city. Since the proposed WNYC 50 kw nighttime interference-free contour is shown by WNYC as not encompassing all areas of the City, this rule will be included in the issue.

F.C.C 72-1122

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CLOSED CIRCUIT TESTS OF EMERGENCY BROADCAST SYSTEM (EBS) TECHNICAL AND PROGRAM ORIGINATION CHANNELS

ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. By Commission action on December 2, 1970, the Basic Emergency Broadcast System (EBS) Plan was amended to provide for random closed circuit broadcasts. The amendments were made effective December 23, 1970.

2. The first random Closed Circuit Test of the EBS was conducted on January 11, 1971. The test disclosed a number of operational deficiencies.

3. On February 20, 1971 an employee of the U.S. Army Strategic Communications Command (STRATCOM) transmitted an Emergency Action Notification in error resulting in considerable confusion.

4. The deficiencies disclosed by these incidents have been under intensive study by Working Groups I and V of the Broadcast Services Subcommittee, National Industry Advisory Committee. Recommendations have been received from the referenced Working Groups, as well as from an OTP Working Group, representing the various government agencies. While these recommendations for changes in the EBS were under consideration by the Commission another random Closed Circuit Test was conducted on September 14, 1971. A large number of operational deficiencies were disclosed.

5. In view of the foregoing on October 14, 1971, the Commission ordered A SUSPENSION OF CLOSED CIRCUIT TESTS OF THE EBS UNTIL FURTHER NOTICE.

6. The Commission completed its review of the recommendations and on April 5, 1972 adopted an order establishing the new EBS. OEP funded for equipment and services required for the new EBS which have been installed, and the system has been tested from both originating points to the networks and wire services. It is appropriate, therefore, that plans be developed for scheduled and random Closed Circuit Tests of the entire National-Level interconnecting systems.

7. IT IS ORDERED, effective December 29, 1972, that the provisions of the Commission's Order of October 14, 1971 are revoked. IT IS FURTHER ORDERED that CLOSED CIRCUIT TESTS OF

EBS WILL BE AUTHORIZED pursuant to the provisions of Section 73.962 of the rules.

8. Authority for the adoption of this action is contained in Section 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–1096

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ALBERT L. CRAIN, HUMBLE, TEX.	Docket No. 19186 File No. BP–17550
ARTLITE BROADCASTING CO., HOUSTON, TEX.	Docket No. 19187 File No. BP–17577
JESTER BROADCASTING CO., NASSAU BAY, TEX.	Docket No. 19188 File No. BP–17579
SPACE CITY BROADCASTING CO., HOUSTON, TEX.	Docket No. 19189 File No. BP–17871
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 8, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER REID AND WILEY CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (a) a Memorandum Opinion and Order of the Review Board, FCC 72R–56, 33 FCC 2d 893, released March 9, 1972; (b) an application for review of the Board's Memorandum Opinion and Order filed April 10, 1972, by the Broadcast Bureau; (c) separate oppositions to the application for review, filed on April 25, 1972, by Albert L. Crain, Artlite Broadcasting Company, Jester Broadcasting Company, and Space City Broadcasting Company;[1] and (d) a reply to the oppositions filed May 4, 1972, by the Broadcast Bureau.

2. This proceeding involves four mutually exclusive applications for a construction permit for a new daytime-only standard broadcast station on 850 kHz. The applicants seek stations for Humble, Texas (Albert L. Crain), Houston, Texas (Artlite Broadcasting Company and Space City Broadcasting Company), and Nassau Bay, Texas (Jester Broadcasting Company). The applications were designated for hearing by our order, 28 FCC 2d 381, released March 31, 1971, on issues concerning technical and financial qualifications, program proposals, and a Section 307(b) comparison of the four applications. In addition, we included an issue to determine whether Albert L. Crain and Jester Broadcasting Company will realistically provide local transmission facilities for their specified station locations or for another larger community. See *Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190 (1965).

[1] Artlite Broadcasting Company and Space City Broadcasting Company support and join in the concurrently filed opposition of Jester Broadcasting Company.

3. Before an evidentiary hearing commenced, the applicants entered into a joint agreement providing for the dismissal of the applications of Crain, Jester, and Space City and for reimbursement by Artlite of the other applicants' reasonable and prudent expenses incurred in the preparation and prosecution of their applications. The joint agreement is contingent upon a grant of Artlite's application and dismissal of the other applications without publication under Section 1.525(b) of the Rules.

4. Chief Administrative Law Judge Gladstone issued a Memorandum Opinion and Order (FCC 72M–172) on February 2, 1972, dismissing the respective applications of Crain, Jester, and Space City without requiring publication and granting the application of Artlite. The order was *released* on February 7, 1972; however, the proceeding was not to be terminated until the 20th day following issuance of the order to allow one applicant time to file an affidavit regarding claimed engineering expenses to be reimbursed under the joint agreement. Subsequently, the affidavit was filed and an additional Order (FCC 72M–220) was released on February 17, 1972, authorizing and approving reimbursement of the claimed engineering expenses.

5. The Broadcast Bureau wished to contest Judge Gladstone's order with respect to the dismissal of the Jester application without requiring publication in view of Section 1.525(b) of the Rules. Toward that end, the Bureau filed a Notice of Appeal on February 25, 1972, and an Appeal on March 6, 1972. The Review Board, in a Memorandum Opinion and Order (33 FCC 2d 893) released March 9, 1972, dismissed the Bureau's Notice of Appeal and Appeal on the ground that the Bureau did not comply with Section 1.302 of the Rules. Section 1.302 reads as follows:

> "(a) If the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, *may* file an appeal from that ruling within 30 days after the ruling is *released*.
>
> "(b) Any party who desires to preserve the right to appeal shall file a notice of appeal within 10 days after the ruling is *released*. If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission or the Review Board on its own motion. . . ." (Emphasis added).

The Review Board stated that, if a notice of appeal is not filed within 10 days from the release date of a final ruling, the right to appeal no longer exists. The Board concluded that the Bureau's right to appeal was foreclosed because its notice of appeal was not filed within 10 days from the February 7, 1972, release date.[2] The Bureau then filed an application for review of the Board's order.

6. The Bureau acknowledges that, if this were a "normal case," the notice of appeal should have been filed within 10 days after Judge Gladstone's order was released on February 7, 1972. However, the Bureau argues that, since the release date did not coincide with the

[2] Review Board Member Berkemeyer issued a dissenting statement noting that: ". . . the juxtaposition of the two subsections, with the general unrestricted one coming first, leaves sufficient chance of misunderstanding to justify acceptance of the Bureau's appeal in this case. The Examiner's Order which delayed termination of the proceeding for twenty days also raises a legitimate question as to how the viewing of the ten days allowed for the filing of a Notice of Appeal should be determined. Following issuance of this document with its clarifying interpretations, I would in future cases join with the majority in rejecting appeals which do not satisfy these requirements."

termination date, the controlling date under subsection 1.302(b) is the termination date. The Bureau also contends that, since its appeal was filed within 30 days of the release date as required by subsection 1.302(a), its failure to file a notice of appeal within the 10 day period did not prolong the proceeding or prejudice any party. Finally, the Bureau urges that its appeal raises a question "replete with public interest considerations . . ." and that this case should thus be remanded to the Board with instructions to rule on the merits of the Bureau's appeal.

7. The applicants unanimously oppose the Bureau's application for review, urging that the filing requirements of Section 1.302 are based on the release date of the order in question, that an appeal is foreclosed unless a notice of appeal has been filed within 10 days after the ruling is released, and that the Review Board thus lacked any jurisdictional basis for considering the Bureau's appeal. The applicants also dispute the Bureau's contention that the public interest requires consideration of its appeal, since the substantive question has been given extensive consideration by Judge Gladstone, since there is a public policy in favor of orderliness, expedition, and finality in the adjudicatory process, and since grant of the Bureau's appeal would return the parties to their status as competing applicants in a potentially lengthy hearing.

8. We agree with the applicants and the Review Board that the filing requirements of Section 1.302 are based solely upon the release date of the order in question and that the timely filing of a notice of appeal is a prerequisite for consideration of an appeal. However, we are also persuaded that the circumstances surrounding Judge Gladstone's order, which specified a termination date *in futuro*, raised a legitimate question as to when the notice of appeal in this case should have been filed. Although it appears that the notice of appeal should have been filed within 10 days after the ruling was released, the language of Section 1.302 makes no specific provision for the situation presented by this case.

9. While we are convinced that the prompt and orderly disposition of the Commission's business requires that the filing requirements, with respect to any subsequent order similar to the one issued by Judge Gladstone, should be controlled, in the absence of extraordinary circumstances,[3] by the release date of the order terminating the proceeding, we recognize that there was some ambiguity as to the proper course of action here. When this fact is considered in light of the additional circumstances that the Bureau's appeal was filed within the requisite 30 day period after release of Judge Gladstone's order and that the Bureau's appeal goes to the merits of the ultimate disposition of this proceeding, we believe that a sufficient public interest showing has been made to warrant consideration of the substance of the Bureau's appeal as suggested by dissenting Board Member Berkemeyer.

10. For the reasons set forth above, we have concluded that the Bureau's application for review should be granted, that the Review Board's Memorandum Opinion and Order dismissing the Bureau's

[3] For example, if the original ruling should be supplemented by a subsequent order which includes a new matter, the filing requirements of Section 1.302 would be governed by the release date of the second order as to an appeal of that new matter.

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appeal should be set aside, that the provisions of subsection 1.302(b) should be waived to the extent that they would otherwise preclude consideration of the Bureau's appeal, and that this matter should be remanded to the Board for full consideration of the merits of the Bureau's appeal.

11. Accordingly, IT IS ORDERED:

(a) That the application for review filed by the Broadcast Bureau on April 10, 1972, IS GRANTED;

(b) That the Review Board's Memorandum Opinion and Order, FCC 72R-56, 33 FCC 2d 893, released March 9, 1972, IS SET ASIDE;

(c) That the provisions of subsection 1.302 of our Rules ARE WAIVED; and

(d) That this matter IS REMANDED to the Review Board.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1097

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of THE COURT HOUSE BROADCASTING CO. (ASSIGNOR) and CHILLICOTHE TELCOM, INC. (ASSIGNEE) Application for voluntary assignment of license for radio Station WCHI-AM Chillicothe, Ohio	Docket No. 19600 File No. BAL-7227

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 8, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER JOHNSON NOT PARTICIPATING.

1. On February 5, 1971, the Commission accepted for filing the joint application of The Court House Broadcasting Co. (Court House) (Assignor) and Chillicothe Telcom, Inc. (Telcom) (Assignee) for authority to assign the license for radio station WCHI-AM, Chillicothe, Ohio. In an order, FCC 72-877, released October 13, 1972, we noted that Telcom is a subsidiary of The Chillicothe Telephone Co., a telephone common carrier, within whose exchange area WCHI-AM is located. Expressing our concerns over "whether a telephone common carrier should be permitted to acquire and operate a broadcast facility," we designated the captioned assignment application for oral argument on the following issue:

> Whether the public interest would be served by permitting a telephone common carrier to acquire and operate a broadcast facility within its exchange area.

2. Subsequent pleadings, affidavits of principals of the assignor and assignee, a stipulation entered into between the parties, and oral argument held before the Commission, *en banc*, on November 20, 1972, have raised certain questions of fact with respect to the merits of the subject assignment application. In its application (BAL-7227) at Section 1, page 2, question 9c, Court House was specifically asked if it had any applications pending before the Commission. It answered "No." In spite of its representation to the contrary, our records show that Court House has a pending application for new FM facilities in Chillicothe, Ohio (BPH-6214, filed March 16, 1968). Court House's application is mutually exclusive with an application (BPH-6327, filed May 31, 1968) for new facilities on the same frequency, in the same community, filed by Telcom.

3. The instant assignment agreement provides that Telcom will pay Court House $175,000 for WCHI-AM. Of this sum, $33,000 is con-

sideration for a covenant not to compete. Under the terms of the covenant, Court House and its principals, Wilbur N. Nungesser and Grace Nungesser, agree that "they will not, directly or indirectly, engage in radio broadcasting or otherwise compete" with Telcom. The covenant specifically provides that its provisions will not apply to Court House's existing station WCHO, located in Washington Court House, Ohio. It appears, however, that the covenant requires the dismissal of Court House's pending FM application. During the negotiations leading to the execution of the assignment agreement, Telcom and Court House were aware of the mutually exclusive FM applications pending before us.

4. The foregoing facts raise serious questions with respect to the incorrect statement contained in the assignment application and possible violations of Section 311(c) of the Communications Act and Section 1.525 of the Commission's Rules.[1] We are not persuaded by the unsupported and untested statements of Court House and Telcom that the withdrawal of Court House's application was not contemplated in the covenant and that, in any event, no compensation will be paid for the withdrawal. The plain wording of the agreement requires the withdrawal of Court House's FM application. That the exact terms of the covenant were negotiated by the parties is evident from the exception given to Court House which will enable it to continue to operate WCHO.

5. Moreover, the parties admitted that they were aware of the competing FM applications during those negotiations, Telcom admitted at oral argument that it wanted Court House to withdraw its FM application and that it would benefit from the withdrawal (TR 33); and Court House's principal, Mr. Nungesser, stated in an affidavit that he believed that withdrawal of the FM application was required by the terms of the covenant. Nor have we received a satisfactory explanation concerning the allocation of funds and compensation for the covenant which would rebut any questions concerning a possible violation of Section 311(c) of the Act. Under these circumstances a question exists as to whether the payment is, at least in part, consideration for withdrawal of the FM application, which requires that the parties should have the burden of establishing the validity of their allegation that Court House is not being compensated for the anticipated withdrawal of its FM application.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above captioned application is DESIGNATED FOR EVIDENTIARY HEARING at a time and place to be specified in a subsequent Order and that the issues herein ARE ENLARGED as follows:

1. What effect, if any, does the incorrect statement contained in the application for authority to assign license, File No. BAL–7227, have on the legal qualifications of the assignor.

2. Whether the covenant not to compete contained in the agreement between The Court House Broadcasting Co., and Chillicothe Telcom, Inc., includes, *inter*

[1] Section 311(c) of the Act provides that consideration may be paid for withdrawal of a pending application only if the "value of such payment . . . is not in excess of the amount . . . legitimately and prudently expended and to be expended . . . in connection with preparing, filing and advocating the granting of the application." Section 1.525 of the Rules provides the procedures for the implementation and enforcement of Section 311(c) of the Act.

alia, an agreement for withdrawal of FM application, File No. BPH-6214, filed by The Court House Broadcasting Co.

3. Whether in light of issue 2 the assignment agreement is in violation of Section 311(c) of the Communications Act and Section 1.525 of the Rules.

4. In view of the foregoing whether the grant of the requested authority would serve the public interest, convenience, and necessity.

7. IT IS FURTHER ORDERED, That, The Court House Broadcasting Co., Chillicothe Telcom, Inc., the Chief, Broadcast Bureau and the Chief, Common Carrier Bureau ARE MADE PARTIES to this proceeding.

8. IT IS FURTHER ORDERED, That, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues IS HEREBY PLACED on The Court House Broadcasting Co., and Chillicothe Telcom, Inc.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the PARTIES NAMED herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall within twenty (20) days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That, The Court House Broadcasting Co. shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by Section 1.594 of the Rules.

11. IT IS FURTHER ORDERED, That, pursuant to the provisions of Section 0.365 of the Rules, any review of the Initial Decision herein SHALL BE by the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
THE CHARLOTTE OBSERVER, CHARLOTTE, N.C.
Concerning fairness doctrine personal attack re SIS Radio, Inc., Station WAYS

DECEMBER 11, 1972.

SIS RADIO, INC.,
Radio Station WAYS,
400 Radio Road,
Charlotte, N.C. 28214

GENTLEMEN: This is in reference to the complaint of Mr. C. A. McKnight, Editor of *The Charlotte Observer*, dated August 11, 1972, which alleges that Radio Station WAYS has failed to comply with the Commission's rules regarding the broadcast of personal attacks. In particular, Mr. McKnight states that on August 3, his newspaper "printed a story by Ms. Polly Paddock about changes in the broadcast format of Station WAYS designed to regain its once leading position in the Charlotte market." Mr. McKnight further states that at 8:15 a.m. that same day, "WAYS program director and disc jockey Jay Thomas criticized the story and then made a number of offensive references about Ms. Paddock. . . ." He also states that as neither he nor Ms. Paddock had heard the broadcast in question, he asked the station's general manager for an opportunity to hear a tape of Mr. Thomas' remarks, but was told that no recording had been made. Mr. McKnight has submitted a number of letters from persons claiming to have heard the broadcast in question which, in substance, allege that Mr. Thomas stated that Ms. Paddock's interviewing successes as a reporter for *The Charlotte Observer* were to be attributed to the way she sits and positions her legs during such interviews, and that he advised her to "close your legs" and accept an offer of employment from a "massage parlor," referring to an earlier story by Ms. Paddock on health clubs in the Charlotte area.

In response to the Commission's inquiry, you state that the remarks in question "were made during the course of a discussion involving the journalistic and reporting standards of Ms. Polly Paddock" and were in response to her story in *The Charlotte Observer* which "involved the integrity of the officials of WAYS" and "gave the impression that the sole concern of Sis Radio's principals is to make money from WAYS." You state that "In our opinion, the journalistic standards practiced by reporters working for a newspaper of general circulation in our community and the integrity of officials of a local broadcast facility are issues of public importance" and that Ms. Paddock's story "clearly raised these issues and made them a subject of controversy."

You further state that in your opinion Mr. Thomas' remarks did not constitute a personal attack on Ms. Paddock. You state that the remarks "were directed at the reportorial skills and techniques of Ms. Paddock," and that although Mr. Thomas "acknowledges that in the course of his discussion . . . , he implied that Ms. Paddock uses her feminine charms to good advantage in gathering information for her stories," his remarks were "intended to be humorous, . . . not malicious." Although you raise the possibility of bias on the part of some of the persons whose letters Mr. McKnight has submitted and have presented two letters to Mr. Thomas which indicate that "nothing bad" was broadcast, you acknowledge "the possibility of questionable taste" and note that "Mr. Thomas has been reprimanded."

You also state that assuming the remarks in question do constitute a personal attack on Ms. Paddock, Sis Radio has complied with its affirmative obligations under the applicable Commission rule. In this regard, you state that although no tape or transcript of his remarks was available, "the nature of the Jay Thomas discussion was known to Ms. Paddock as was apparent from the situation which caused Mr. McKnight to write to the FCC." You also note that an offer to appear on WAYS was conveyed to Ms. Paddock within seven days after the broadcast and that such offer "remains open both to Ms. Paddock and/or officials of *The Charlotte Observer* who have been advised that they will be given full freedom as to choice of time, spokesmen and format."

Section 73.123 of the Commission's rules states:

> (a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

Upon the facts before the Commission, it appears that your judgment that Mr. Thomas' remarks did not constitute a personal attack upon the character and integrity of Ms. Paddock is unreasonable. You have not presented any statement from Mr. Thomas indicating the actual language which he used in referring to Ms. Paddock's "reportorial skills and techniques" nor have you specifically denied the complainant's allegations as to what Mr. Thomas in fact said. Under these circumstances substantial weight must be given to the complainant's submissions as to the substance of Mr. Thomas' remarks. These remarks about Ms. Paddock clearly reflected upon her moral character and went beyond merely indicating that she used her "feminine charms" in her work. It would therefore appear that a personal attack was broadcast within the meaning of the above rule and that you were thereby obligated to comply with the rule's applicable provisions.

It further appears that having broadcast a personal attack on Ms. Paddock, you failed to fully comply with your obligations under Section 73.123 of the rules in that no notification of the date, time and identification of such broadcast, nor any script, tape or summary of the attack was transmitted to Ms. Paddock. That Ms. Paddock was apprised of the attack by persons having heard its broadcast does

not relieve a licensee of its obligation to comply with the express requirement of the personal attack rule, including notification by the licensee and furnishing a tape, script or accurate summary of the specific remarks which were broadcast.

However, it is noted that within one week of the broadcast in question, you made an offer to Ms. Paddock of time to respond to Mr. Thomas' remarks and that such offer remains open to both Ms. Paddock and officers of *The Charlotte Observer;* and that such offer appears to present the affected parties with a reasonable opportunity to respond to the attack. You have also stated that should they avail themselves of such offer "they will be given full freedom as to choice of time, spokesmen, and format."

In view of the voluntary offer of time to Ms. Paddock within one week of the broadcast, no forfeiture or other sanction is being imposed. However, this letter will be associated with the WAYS file at the Commission where it will be available for future consideration. In addition, you are requested to submit a statement within ten days of the date of this letter indicating what steps you have taken or will take to ensure full compliance with that rule in the future operations of Station WAYS.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

F.C.C. 72–1133

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (FRESNO, CALIF.).	Docket No. 19534 RM–1928

REPORT AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: CHAIRMAN BURCH CONCURRING IN THE RESULT.

1. The Commission here considers the Notice of Proposed Rule Making, adopted June 28, 1972 (FCC 72–570), proposing amendment of the FM Table of Assignments (Section 73.202(b) of the Rules) to add Channel 290 at Fresno, California. This action was based on the petition of John and Sylvia Sonder, d/b/a Atlas Broadcasting Company (Atlas), licensee of daytime AM Station KXEX, Fresno.[1] Fresno, population 165,972, is the seat of Fresno County, population 413,053, which comprises the Fresno Standard Metropolitan Statistical Area (SMSA).[2]

2. The Notice pointed out that Fresno has six FM channel assignments, all of which are occupied, ten AM stations, of which five are daytime only, and there are two other daytime AM stations in the SMSA (at Coalinga and Fowler) and a Class A FM assignment at Fowler (Channel 244A). Additionally, Atlas' arguments were summarized. Atlas contended that an additional assignment should be made in view of the fact that Fresno is located in a growing area of California in the middle of the San Joaquin Valley which is surrounded by mountain ranges, and it is isolated from other major markets. As a further justification for the channel, Atlas relied on the need for Spanish language programming to serve the Spanish-surnamed population in the Fresno metropolitan area estimated at about 9%. Atlas furnished a preclusion study showing that while Channel 290 would preclude some areas of possible assignment at least three other FM channels were available for assignment to these areas.

3. The Notice also noted that because of population, Fresno was entitled to only six FM assignments under criteria set forth in the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62–867), and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order, dated July 25, 1963, 23 R.R. 1859, 1871 (1963). As to Atlas' argument

[1] Atlas also filed petitions for stay and for partial reconsideration as concerns this proceeding and the Report and Order in Docket No. 19378 (35 FCC 2d 603 (1972)), but these are rendered moot by our action here. In the circumstances, discussion of the issues raised by these petitions is unnecessary.

[2] All population data are from the 1970 U.S. Census.

that another FM channel is needed to provide programming for Spanish speaking population, it was pointed out that there was no assurance that if assigned the petitioner would be the successful applicant. As to population criteria, the Notice pointed out that perhaps the population of the SMSA might be better considered.

4. Comments and reply comments were filed by Atlas and Universal Broadcasting Company (Universal). Universal is the licensee of KFIG(FM), Channel 266 at Fresno. Atlas feels that the suggestion that the SMSA population of Fresno as being more realistic is a valid concept. It also relies on that portion of the Third Report, Memorandum Opinion and Order in Docket 14185, 23 R.R. at 1867–1868, where the Commission stated that another criterion for assignment of FM channels was the importance of service to minority and specialized audiences. In the latter respect, Atlas points to the almost 30% Spanish-surnamed population in the Fresno SMSA. Atlas also relies on information from the 1971 Statistical Abstract of the United States and other data to show various increases in personal income, housing units and other growth of Fresno. Universal feels that the Commission should strictly adhere to the population criteria, and, since Fresno already has six FM channel assignments, another is not permitted. As to Atlas' reliance on programming needs of the community, Universal takes the position that the pending applications for Channel 255 at Dinuba of Korus Corporation (BPH–7657) and Radio Dinuba Company (BPH–7567) would suffice; both propose substantial Spanish language programming and service would be provided to Fresno.[3] Moreover, Universal says that the five AM stations at Fresno operating at night program for this segment of the community. The reply comments of parties add nothing to the basic issues raised by the Notice or by the parties themselves.

5. It is clear that the issues raised in this proceeding in substance are those pointed out in the Notice. We agree with Universal that the intent to program Channel 290 (if assigned) to accommodate the Spanish speaking population of the area is invalid in the light of the requirement for all broadcasters to serve community needs. The principal contention is that assignment of Channel 290 to Fresno would exceed the population criteria. In this respect, it is clear that the population criteria are a guide and not an immutable standard. For example, we have deviated from it when denial of the petition would have meant that a channel could not be used at all because of mileage separations or for other reasons, see *e.g.*, First Report and Order in Docket 19413, 37 F.C.C. 2d 54, 55–6, 58 (1972). Albuquerque, New Mexico, which under the criteria is entitled to only six FM channels, has seven; the recent *Albuquerque* case discussed by the parties concerned the possible assignment of an eighth channel which we declined primarily because the seventh FM channel is not yet on the air (see 35 F.C.C. 2d 230, 235 (1972)).

6. On balance, it would appear that the public interest, convenience, and necessity would be served by allocating Channel 290 at Fresno. For one thing, considering all aural broadcast services, there are only eleven night-time signals for a substantial population. Another impor-

[3] These applications are now in hearing status; see Docket Nos. 19566 and 19567.

tant consideration is that the particular area involved is one where there are a substantial number of FM channels available for assignment to communities in the area [4] as well as Fresno. In sum, there is no reason for not making an additional FM assignment to Fresno on a demand basis.

7. Authority for the action taken here is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended. In accordance with the foregoing, IT IS ORDERED, That effective January 29, 1973, the FM Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED with respect to the city listed below as follows:

City	*Channel No.*
Fresno, Calif	229, 238, 250, 266, 270, 274, 290.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] Certainly the more populous ones. For examples, Sanger (population 10,088), Clovis (population 13,856), and Reedley (population 8,131).

F.C.C. 72-1132

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(B), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (TERRELL HILLS, TEX.).	Docket No. 19524

REPORT AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION:

1. The Commission here considers its Notice of Proposed Rule Making, adopted June 14, 1972 (35 F.C.C. 2d 488, 37 F.R. 12328), inviting comments on whether FM Channel 292A, assigned at Terrell Hills, Texas, in the San Antonio urbanized area, should be deleted since it would soon be vacated by its occupant (KBUC-FM)[1], and on whether the channel should be reassigned to fill a present or future need for FM service outside the San Antonio urbanized area. Reassignment proposals for this Terrell Hills assignment were also invited.

2. The decision to hold rule making on these proposals was made upon reconsideration of our *Memorandum Opinion and Order* of *February 23, 1972* (FCC 72-180), wherein we deleted the Terrell Hills Channel 292A assignment without prior rule making in order to eliminate a short separation between it and a co-channel assignment at Gonzales, Texas. Upon reconsideration, requested by two prospective applicants for the Terrell Hills Channel 292A assignment (S.S.S. Broadcasting, Inc., licensee of a daytime AM station (KAPE) at San Antonio, and Terrell Hills Broadcasting Company), we determined that the short spacing problem could be resolved by judicious site selection for a Terrell Hills Channel 292A operation, there being sufficient area approximately 8 miles west of Terrell Hills where a transmitter could be located and satisfy all separation and city service requirements of the rule. We therefore decided that the short spacing problem did not warrant deleting Channel 292A from Terrell Hills and took action rescinding that action in our *Memorandum Opinion* and *Order* of *June 14, 1972* (35 F.C.C. 2d 482). We also decided, however, that further consideration of whether the channel should be retained or deleted from Terrell Hills and reassigned

[1] Station KBUC-FM changed over to operation on the San Antonio Channel 298C assignment on August 17, 1972, under program test authority, pursuant to authorization granted its licensee, Turner Broadcasting Corporation, on November 10, 1971 (BPH-6285), after hearing (Decision adopted July 20, 1971, Docket No. 18239, 31 F.C.C. 2d 162; stayed by Order, adopted August 31, 1971, FCC 71-890; stay Dissolved by Further Order, adopted November 10, 1971, FCC 71-1150). The license for the Station KBUC-FM operation on the San Antonio Channel 298C assignment was granted September 11, 1972.

elsewhere warranted further consideration in rule making. Consequently, this proceeding was instituted.

3. Comments were received from S.S.S. Broadcasting and Terrell Hills Broadcasting. Both take the position that Channel 292A should be retained as a Terrell Hills assignment and reaffirm their intention to apply for its use if it is retained there. S.S.S. Broadcasting also reaffirms its interest in using the channel to provide a first FM service in the San Antonio area which is primarily oriented to the needs of the Black residents. Terrell Hills Broadcasting expresses particular interest in using the channel to provide needed programming not only for the Black residents but for the Mexican American and Chicano residents of the area as well. It points out that these residents of the area constituted approximately 57 percent of the total population of the San Antonio Standard Metropolitan Statistical area in 1970, approximately 50 percent of whom are Spanish surnamed, of Mexican origin, and approximately 7 percent of whom are Black (1971 Statistical Abstract of the United States). S.S.S. Broadcasting also submits with its comments, and with a supplement filed thereto, a number of letters from San Antonio community leaders, organizations and others in the area which express a need and desire for Black-oriented programming during evening hours in the San Antonio area. No comments or reassignment proposals supporting the deletion of Channel 292A from Terrell Hills were received.

4. Terrell Hills (1970 population, 5,225) is an incorporated city located within the corporate limits of San Antonio (1970 population, 654,153) and within the San Antonio urbanized area (1970 population, 830,460), which is coextensive with Bexar County. Eleven FM channels (one educational) are assigned to this area. Other than the Terrell Hills Channel 292A assignment, all are Class C channels, assigned to San Antonio and in use now that Channel 298C has been activated by Station KBUC–FM. Eleven AM stations also serve as local outlets in the area. These stations provide Terrell Hills and the rest of the San Antonio urbanized area with a variety of local FM and AM services. From all indications, it also appears that Terrell Hills' broadcast needs are not distinct from those of the San Antonio area in general.[2] In these circumstances, now that the Terrell Hills Channel 292A assignment is vacant, and since it is the only Class A assignment in the San Antonio urbanized area, not designed for wide area coverage, as are Class C channels, to serve markets of the size of the San Antonio urbanized area, and cannot provide a service technically comparable to that which the Class C stations in this area can provide,[3] we felt it

[2] The Examiner in the comparative hearing case for the San Antonio Channel 298C assignment, *Turner Broadcasting Corp.*, 31 F.C.C. 2d 164 (1969), concluded in this regard, as follows (at p. 184):

"Based on the record as a whole, it is concluded that Terrell Hills is realistically a residential enclave wholly within the city limits of San Antonio which shares the needs, interests, social, civic and recreational facilities of San Antonio generally; and is in large degree dependent on San Antonio for governmental services. The extent to which the record shows Terrell Hills to be distinctive rests in the higher economic position and educational achievements of its residents. Stated simply, it is one of the better residential areas of the community and nothing more, with the broadcast stations there assigned being dependent on San Antonio and its metropolitan area for existence."

[3] Aside from our desire to avoid mixing classes of FM assignments in the same city, wherever possible, or of assigning limited Class A channels to the principal city of a large metropolitan area, this Class A channel could not be reassigned to San Antonio, as S.S.S. Broadcasting previously suggested, since, as the Notice pointed out, it could not provide the requisite 70 dbu signal over all of San Antonio, as Section 73.315(a) of the Rules requires.

necessary and desirable to give consideration to whether there is any justifiable reason for retaining this Class A assignment at Terrell Hills. The Notice stated that the public interest might be better served by reassigning this Class A channel to meet a need for FM service in unserved or underserved areas outside the San Antonio urbanized area. It pointed out, among the technically feasible possibilities are Texas communities within a radius of 40 miles and 40 to 65 miles from San Antonio, such as Charlotte, Jourdanton, Poteet and Pleasanton, to the south and Boerne, Kerrville, Fredericksburg and Blanco to the northwest.

5. Now that we have considered the record herein, we believe it unrealistic to expect that if Channel 292A is deleted from Terrell Hills it is likely that it would be put to use for a needed local service outside the San Antonio area in the foreseeable future; there is a real possibility that the channel might, instead, remain unused indefinitely. The fact that no comments or proposals were submitted which would indicate an interest, demand or need for use of Channel 292A in any area outside the San Antonio urbanized area tends to bear this out. The comments received also do. In commenting on the eight communities outside the San Antonio urbanized area which were mentioned in the Notice as possibilities for a Channel 292A assignment, both S.S.S. Broadcasting and Terrell Hills Broadcasting contend that it is doubtful whether any of the named communities could support a new FM facility since the three largest communities (Pleasanton, with a 1970 population of 5,407; Kerrville, with a 1970 population of 12,672; and Fredericksburg, with a 1970 population of 5,326) already have occupied FM assignments and local service, and the other five named, the largest of which had a 1970 population of 3,013 (Poteet), appear too small to make a local FM outlet economically feasible. They also point out that all but two of the named communities (Fredericksburg and Blanco) fall within the 1 mv/m contour of the nine San Antonio Class C stations, and that those two communities and other towns in the area are served by the San Marcos and Austin, Texas, Class C stations. In addition, they observe that should a need arise, FM channels other than Channel 292A could be assigned to all of the named communities without FM assignments except Blanco (1970 population, 1,022).

6. On the other hand, the comments filed by S.S.S. Broadcasting and Terrell Hills Broadcasting do evidence that there is interest and demand for use of Channel 292A at Terrell Hills and that it is reasonable to expect that Channel 292A would be used if retained there. They also dispel our concern that a Terrell Hills Class A station would not be able to provide a sufficiently strong signal throughout the San Antonio urbanized area to serve it effectively or to compete with the San Antonio Class C stations serving this area for audience and support. In view of the flat terrain advantages in the San Antonio area, it appears from Terrell Hills Brodcasting's showing that, in the area where a transmitter meeting all spacing requirements for a Terrell Hills Channel 292A operation could be located, a Channel 292A operation could provide the requisite city grade signal (70 dbu) to all of Terrell Hills, and also to most of the San Antonio urbanized area—95% or more of the area, according to its estimate—and could provide a signal of at

least 67 dbu to all of the San Antonio urbanized area. A signal of that strength is adequate for effective service in the flat terrain in this area and should not put a Class A station at a significant disadvantage in competing with the other Class C stations in the San Antonio urbanized area, despite their superior technical capability for providing a stronger signal over a greater area.

7. The comments filed do not, however, provide a basis for concluding that Terrell Hills has a distinct need for a local outlet or that a Channel 292A operation there would serve any area which could be considered underserved from the standpoint of assignments and services available. The showings of S.S.S. Broadcasting and Terrell Hills Broadcasting as to aural broadcast programming needs of substantial segments of the population in the San Antonio area which are not being met by the existing local stations are, of course, of interest and concern and useful in our licensing processes, where such problems are properly dealt with. They are not, however, dispositive in assignment proceedings, such as this, where competing needs of communities and areas for FM assignments must be considered in making a fair and equitable distribution of the available FM channels under the standard of Section 307(b) of the Communications Act.

8. Nevertheless, since there has been no demonstrated need for Channel 292A outside the San Antonio urbanized area, we think that, on balance, the public interest and the objectives of the Act and our assignment policies are best served by retaining Channel 292A at Terrell Hills. There is no public interest advantage in deleting this assignment if the channel then remains fallow, as appears likely. We are also now satisfied that the technical disadvantages of the Terrell Hills Channel 292A assignment are not such as to preclude its use for serving Terrell Hills and the San Antonio urbanized area effectively in conformity with all spacing and other technical requirements of the rules. This being the case, we believe the public interest advantages clearly lie in retaining Channel 292A at Terrell Hills to provide opportunity for Terrell Hills to continue to have its own local outlet and a market the size of the San Antonio urbanized area to have an additional and greater variety of services.

9. Accordingly, we are retaining Channel 292A at Terrell Hills, Texas, in the FM Table of Assignments, Section 73.202(b) of the Rules, and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1134

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (WASHINGTON, IOWA, CENTERVILLE, TENN., WINNSBORO, TEX., STANTON, KY., GORDON, GA., MERCERSBURG, PA., ELKADER, IOWA, AND KERNVILLE, CALIF.).	Docket No. 19598 RM-1926 RM-1993 RM-1969 RM-1996 RM-1972 RM-2009 RM-1988 RM-2010

FIRST REPORT AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION:

1. The Commission has before it its Notice of Proposed Rule Making issued on September 27, 1972 (FCC 72-860), 37 F.R. 21353, inviting comments on a number of changes in the FM Table of Assignments as advanced by various parties. All comments and data filed in response to the Notice were considered in making the following determinations. There were no opposing comments. Population figures were taken from the 1970 U.S. Census reports. The following decision disposes of all subject petitions except RM-2010 (Kernville, California) which will be taken up at a later date.

2. RM-1926—Washington, Iowa (Leighton Enterprises, Inc.); RM-1969—Centerville, Tennessee (Trans-Aire Broadcast Corporation); RM-1972—Winnsboro, Texas (Clegmo, Inc.); RM-1988—Stanton, Kentucky (A. Dale Bryant); RM-1993—Gordon, Georgia (Piedmont Broadcasting Company, Inc.); RM-1996—Mercersburg, Pennsylvania (Richard A. Fulton); RM-2009—Elkader, Iowa (J. R. Evans).

In the above cases interested parties seek the assignment of a first FM channel (Class A) to a community without requiring any other changes in the FM Table of Assignments, and each assignment can be made in conformance with the Commission's minimum mileage separation rule. Each of the petitioners stated its intention to apply for the channel, if assigned, and to build a station, if authorized. In the Notice of Proposed Rule Making in this proceeding we set out economic and other information pertaining to the need for a first FM assignment in each of the communities. We shall, therefore, not repeat it in this document. The communities range in size from 1,592 persons for Elkader, Iowa, to 7,704 persons for Stanton, Kentucky. Each of the following communities has one daytime-only AM station: Washington, Iowa; Centerville, Tenn.; and Gordon, Georgia. The remaining communities have no local broadcast facilities. None of the communities is a part of an urbanized area (1970 Census) and each appears to war-

rant the proposed assignment. We are of the view that adoption of each proposal would serve the public interest.

3. Authority for the adoption of the amendments contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, IT IS ORDERED, That effective January 29, 1973, Section 73.202(b) of the Commission's rules, the FM Table of Assignments, IS AMENDED to read as follows:

City	*Channel No.*
Georgia: Gordon	296A
Iowa:	
Elkader	261A
Washington	237A
Kentucky: Stanton	[1] 285A
Pennsylvania: Mercersburg	221A
Tennessee: Centerville	[2] 244A
Texas: Winnsboro	285A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] A site at least 7 miles south southeast of Stanton would be required in order to meet the minimum spacing requirements of the rules for Channel 285A.
[2] A site at least 6.6 miles northwest of the Centerville post office would be required in order to meet the minimum spacing requirements of the rules for Channel 244A.

109-021—73——4

F.C.C. 72-1153

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTIONS 74.731(f) AND 74.1231(f) OF THE RULES PERTAINING TO LOCAL ORIGINATION OF SLIDE AND VOICE ANNOUNCEMENTS AT TELEVISION TRANSLATOR STATIONS AND VOICE ANNOUNCEMENTS AT FM TRANSLATOR STATIONS.	Docket No. 19661

NOTICE OF PROPOSED RULEMAKING

(Adopted December 14, 1972; Released December 19, 1972)

BY THE COMMISSION:

1. The President of the National Translator Association (NTA) has requested the Commission by letter to amend its rules to increase the period of time during which locally generated signals may be transmitted over UHF television broadcast translator stations. Section 74.731(f) of our rules currently permits the transmission of still photographs, slides and recorded voice announcements for a period not to exceed 20 seconds at intervals of no less than one hour. NTA requests that the 20-second period be increased to 30 seconds at intervals of no less than an hour. We cannot accept NTA's request as a petition for rule making because it does not comply with our rules governing petitions for rule making. However, for the reasons stated below, we have decided to propose rule making on our own motion.

2. NTA contends that, on the basis of experience, the 20-second limitation has proved to be unworkable. At the time the rule was promulgated (*Report and Order* in Docket No. 15971, 13 FCC 2d 305, 13 RR 2d 1577), according to NTA, television stations whose signals translators rebroadcast were using 20-second announcements, but the general practice now seems to be to use 30-second announcements. The result is that when a translator station originates its own announcements for 20 seconds, there is a 10-second residual announcement, originating at the primary station, appearing on the receiver of viewers. This, NTA says, is confusing to viewers and serves no beneficial purpose.

3. The study to which NTA refers was conducted by South Lane Television, Inc., the licensee of five UHF television translator stations in Cottage Grove, Oregon. South Lane has been a pioneer in the field of local origination of slide announcements by translators. The study, done between April 24 and April 30, 1972, was made on the basis of the insertion of 20-second announcements at normal commercial advertising breaks in the primary stations' programs. In each instance, at the conclusion of the translators' messages, the remaining portion of

the primary stations' commercials which appeared on viewers' screens was timed and recorded. The residual time varied from five seconds to 40 seconds, but it was clear that in the majority of cases, the residual time was 10 seconds. From this study, NTA has concluded that if the duration of the local slide announcements were increased from 20 seconds to 30 seconds, the problem would be largely solved.

4. Section 74.1231(f) of our rules permits the use of locally generated voice announcements on FM Broadcast Translator Stations under the same general conditions as 74.731(f) permits the local generation of television pictures and sound. We therefore, in the interest of consistency, propose that the 20-second limit on locally generated voice announcements at FM Broadcast Translator Stations be increased to 30 seconds.

5. Authority for the action proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set out in Section 1.415 of the Commission's Rules and Regulations, interested parties may file comments on or before January 29, 1973, and reply comments on or before February 8, 1973. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

7. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

8. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street, N.W.).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1107

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FOX CITIES COMMUNICATIONS, INC., APPLETON, WIS. For Certificate of Compliance	CAC-88 WI054

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 13, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On March 31, 1972, Fox Cities Communications Inc., filed an "Application for Certificate of Compliance Pursuant to Section 76.13 (b) of the Rules" (CAC-88) in which it seeks approval for a new cable television system at Appleton, Wisconsin, a community located in the 62nd largest television market (Green Bay, Wisconsin). Fox proposes to carry the following television signals:

WBAY-TV (CBS), Green Bay, Wisconsin
WFRV-TV (NBC), Green Bay, Wisconsin
WLUK-TV (ABC), Green Bay, Wisconsin
KFIZ-TV (Ind.) Fond Du Lac, Wisconsin
WMVS-TV (Educ.) Milwaukee, Wisconsin
WMTV (Educ.) Milwaukee, Wisconsin
WHA-TV (Educ.) Madison, Wisconsin
WVTV (Ind.) Milwaukee, Wisconsin
WPNE (Educ.) Green Bay, Wisconsin
WGN-TV (Ind.) Chicago, Illinois

The carriage of all but the last three signals is grandfathered. Fox proposes to carry the remaining signals pursuant to the provisions of Sections 76.61 and 76.63 of the Commission's Rules, which govern signal carriage for cable systems located in markets 51-100. Certification of this application is opposed by WFRV, Inc., licensee of Station WFRV-TV and KFIZ Broadcasting Company, licensee of Station KFIZ-TV, Fond Du Lac. WFRV, Inc. alleges numerous deficiencies in the application, the franchise and the procedures by which the franchise was awarded. KFIZ's opposition urges only that action be withheld pending action in the *Midwest* appeal, and therefore was mooted by the decision in *United States* v. *Midwest Video Corporation*, — US — (Case No. 71-506) decided June 7, 1972.

2. WFRV, Inc. objects to certification on the following grounds: (a) There is no detailed showing in the application that a "full public proceeding affording due process" attended the award of the franchise; (b) initial rates and subsequent increases can be authorized without convening a proceeding in which the public participates; (c)

the franchise does not require significant construction consistent with Commission requirements and there is no provision for an extension of the system to a substantial percentage of the franchise area each year; (d) there is no provision in the franchise for the investigation and resolution of subscriber complaints or provision for the maintenance of a local office; (e) no detailed plan for the availability and administration of its required access channels has been submitted; and (f) there is no indication that the system will comply with the syndicated program exclusivity rules.

3. In response to these objections, Fox Cities amended its application in the following particulars: it asserts that full public proceedings attended the award of the franchise, and these procedures are described in detail; the franchise requires completion of the cable plant within two years after its plans and specifications are approved by the Common Council; the franchise extends for 10 years; subscriber rates and any changes thereto must receive approval from the Appleton Common Council; an annual franchise fee has been established at two per cent of gross subscriber revenues. To the extent the franchise does not adhere to all the standards of Section 76.31 of the Rules—e.g. a local business office, procedures to resolve subscriber complaints, an accelerated construction schedule—Fox Cities has given its assurances that it will conduct its operations in accordance with Section 76.31 nonetheless.

4. The franchise awarded Fox Cities was issued on July 1, 1970, well before the effective date of our new rules, and pursuant to Section 76.13(b)(3) of the Rules, applicants are only required to demonstrate that such franchises substantially comply with our franchise guidelines. Applying the criteria the Commission established in FCC 72–1005 — FCC 2d ——, *CATV of Rockford, Inc.*, we are satisfied that the franchise awarded Fox Cities substantially complies with Section 76.31 of the Rules. The objections to the stated access program of Fox Cities and the complaint that the applicant has given no assurance that it will comply with the syndicated program exclusivity rules can be disposed of quickly. Comparing Fox Cities access statement with the requirements of Section 76.251 discloses no disparities. Fox Cities previously indicated to WFRV–TV that it intends to honor the provision of Section 76.151(b)—the applicable syndicated program exclusivity rule. In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for a Certificate of Compliance (CAC–88) filed March 31, 1972, by Fox Cities Communications, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That the "Objection of WFRV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Qualified Opposition to Issuance of Certificates of Compliance", filed by KFIZ Broadcasting Company, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN WAPLE, *Secretary.*

F.C.C. 72R-374

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CHARLES W. HOLT, TALLAHASSEE, FLA.	Docket No. 19445 File No. BP-18189
TALQUIN BROADCASTING CO., QUINCY, FLA.	Docket No. 19446 File No. BP-18464
B. F. J. TIMM, TALLAHASSEE, FLA. For Construction permits	Docket No. 19447 File No. BP-18487

MEMORANDUM OPINION AND ORDER

(Adopted December 11, 1972; Released December 15, 1972)

BY THE REVIEW BOARD: BOARD MEMBER NELSON NOT PARTICIPATING.

1. The Broadcast Bureau filed a petition to enlarge issues on July 12, 1972, and a supplement thereto on July 28, 1972, requesting the addition of a Rule 1.514 and/or 1.65 issue [1] against Charles W. Holt (Holt), an applicant in the above entitled proceeding. Untimely responsive leadings thereto [2] were filed by Holt and B. F. J. Timm (Timm). For the reasons set forth in note 3 below,[3] the Bureau's petition, will be treated as an unopposed petition, and will be granted to the extent indicated below.

2. The initial petition herein was prompted by disclosures in Holt's biographical statement, exchanged July 2, 1972, prior to the hearing in this proceeding, wherein the biographical sketch of Holt indicated that he had interests in three businesses, namely, Holt Development

[1] The requested issue reads, as follows:

(a) To determine whether Charles W. Holt has failed to comply with the provisions of Sections 1.514 and/or 1.65 of the Commission's Rules, and, if so, to determine the effect of such noncompliance on the applicant's basic or comparative qualification to be a Commission licensee.

[2] Also before the Board are the following filed related pleadings: (a) comments, filed on August 3, 1972, by Holt; (b) comments, filed August 11, 1972, by B. F. J. Timm; (c) Broadcast Bureau's reply, filed August 15, 1972; and (d) Holt's motion to strike Timm's comments, filed August 22, 1972.

[3] Section 1.294(c) of the Commission's Rules prescribes the time limitations for responsive pleadings as 10 days for oppositions and 5 days for replies to oppositions. Although the Rule speaks in terms of oppositions and replies, it is evident that the purpose of the Rule is to prescribe time limitations for responsive pleadings irrespective of their nomenclature. Thus, the purpose of the Rule cannot be subverted by different or special label terms, and the labelling of a pleading as comments does not extend the time limitations prescribed by the Rule. Stated another way, under the Rule, the 10-day period allowed for the filing of oppositions and the 5-day period allowed for the filing of reply pleadings govern the time period for all responsive pleadings irrespective of their nomenclature. Here, Holt belatedly filed his responsive pleading on August 3, 1972, labelling it "Comments" although it is, in substance, an opposition pleading. Similarly, Timm belatedly filed his responsive pleading to the Bureau's initial petition, labelling it as "Comments", and, indeed, even seeking a different issue than that requested by the Bureau despite the fact that it is now well established that the Board does not consider requests for new or additional issues filed in a responsive pleading because the opposing parties have no chance to analyze or challenge such requests. *Cf. East St. Louis Broadcasting Co.*, 9 FCC 2d 212, 10 RR 2d 879 (1967). Accordingly, Holt's motion to strike Timm's comments will be granted. The Board will not consider these responsive pleadings, and will treat the Bureau's petition as an unopposed petition.

Corporation,[4] an investment company; Air Enterprises, Inc.,[5] a program production and service company; and Southern National Bank [6] in Hattiesburg. However, examination of Holt's subject application, filed on May 7, 1968, revealed that he had not reported these interests in Table II of Section II of the application despite the fact that such information is required to be reported. More specifically, the application requires a report of all businesses or financial enterprises in which an owner has a 25% or greater interest or official relationship within the five-year period preceding the filing of the application. Although Holt at no time prior to the filing of the subject petition amended the application to reflect these omitted business interests, a revised balance sheet was filed which listed investments in these three companies; however, the balance sheet did not reveal the information called for by Table II of Section II of the application relating to the date of acquisition, the extent of the interest, or the official relationship, if any, with these business enterprises. Subsequent to the filing of the subject petition, the hearing in this proceeding commenced, and at the hearing Holt testified concerning his ownership interest in the above named companies. He also testified that he had three additional business interests, namely, Donavan Lane Clothing,[7] Nylonate Paint Company,[8] and Happy Products Toy Company.[9] His testimony at the hearing in these respects resulted from a voluntary agreement by counsel for Holt to the adduction of evidence regarding these alleged nondisclosures as if the issue sought herein by the Broadcast Bureau had already been added. (Tr. 123.) Thus, all of this unreported information was adduced either by cross-examination or examination of Holt by his own counsel.

3. As indicated by notes 4 and 5, *supra*, Holt is a controlling stockholder of Holt Development Corporation, an investment company, and Air Enterprises, Inc., a program production and service company, for his radio stations. Since the Commission specifically indicated in its designation Order that the respective proposals herein for Quincy and Tallahassee, Florida, would serve substantial areas in common, and, therefore, specifically specified a contingent comparative issue, it is evident that Holt's ownership of Air Enterprises, Inc., the program production and service company for his radio stations, as well as his ownership and official relationship with other non-broadcast enterprises, may be of decisional significance under the comparative issue. If so, there may have been a motive for Holt's failure to disclose these interests in Table II of Section II of the application. We will, accordingly, add the issue. However, the scope of this issue is limited to alleged non-disclosures in Holt's subject application. Contrary to the view of the Bureau, Sections 1.65 and 1.514 of the Rules speak in terms of or relate solely to pending applica-

[4] Holt has been a controlling stockholder for over five years.
[5] Holt has been the 100% stockholder for more than five years. He testified that Air Enterprises is a regional sports network and an administrative service company for Holt Stations. (Tr. 119–20.)
[6] Holt is a director and less than 5% stockholder. He testified that he was one of the organizers of the bank and has served continuously on its board since 1965. (Tr. 121.)
[7] This is a retail clothing store. Holt has been a director and 6% stockholder since approximately 1955. (Tr. 125. 269–70.)
[8] Holt has been a director and less than 1% stockholder since about 1971. (Tr. 125.)
[9] Holt has been a director and a 7½% stockholder since August 1971. (Tr. 125, 270.)

tions,[10] and, therefore, the issue sought by the Bureau cannot be expanded to include alleged non-disclosures of non-broadcast interests in prior renewal applications filed by Holt in connection with his other broadcast interests.

4. Accordingly, IT IS ORDERED, That the Broadcast Bureau's petition to enlarge issues, filed July 12, 1972, IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

5. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED to determine whether Charles W. Holt has failed to comply with the provisions of Sections 1.514 and/or 1.65 of the Commission's Rules and Regulations, and, if so, to determine the effects of such non-compliance on the applicant's basic or comparative qualifications to be a broadcast licensee; and

6. IT IS FURTHER ORDERED, That the burden of proceeding SHALL BE upon the Broadcast Bureau, and the burden of proof under such issue SHALL BE upon Charles W. Holt; and

7. IT IS FURTHER ORDERED, That the motion to strike, filed August 22, 1972, by Charles W. Holt, IS GRANTED.[11]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[10] In passing, the Board merely notes the apparent desire of the Bureau and Timm to cross-examine Holt with respect to alleged non-disclosure of non-broadcast interests in prior renewal applications relating to Holt Stations. (Tr. 275–7, 293.) As indicated at notes 1 and 3, a general type of non-disclosure issue has not been the subject of a timely petition, and cannot for reasons set forth in note 3 be lodged in a responsive pleading to the Bureau's petition here which seeks a more limited type of issue.

[11] See note 3, *supra.*

F.C.C. 72-1146

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REQUEST, FOR ISSUANCE OF TAX CERTIFICATE FOR ANTICIPATED SALE OF VIACOM INCORPORATED, INC., COMMON STOCK PURSUANT TO SECTIONS 73.501(a)(1) OF THE COMMISSION'S RULES, BY J. A. W. IGLEHART, LUTHERVILLE, MD.	File No. CTAX-9

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION:

1. The Commission has before it for consideration a request, by Mr. J. A. W. Iglehart, of Lutherville, Maryland, filed on August 29, 1972, for a tax certificate, pursuant to Section 1071 of the Internal Revenue Code, 26 USC § 1071, with respect to the sale of stock in Viacom International, Inc. ("Viacom"), a corporation created in the spin-off by Columbia Broadcasting System, Inc. ("CBS"), of its cable television and syndication businesses.

2. In his request, Mr. Iglehart states that—

(a) In 1970, CBS decided to spin off its cable television and syndication businesses to a new company, Viacom, in order to comply with newly adopted Commission rules prohibiting cross ownership et al. of a national television broadcast network with (1) a cable television system (Section 74.1131, now Section 76.501),[1] or (2) certain nonnetwork interests and syndication activities. (Section 73.658(j)(1).)[2]

(b) CBS proposed to the Commission that, in connection with that spin-off transaction, CBS give its stockholders Viacom stock in proportion to their holdings of CBS common stock;[3] and that each (*1*) CBS director, officer, or division president who would be entitled to receive 100 or more shares of Viacom stock, and each (*2*) individual stockholder who would have the power to vote more than 1 percent of the outstanding common stock of Viacom, execute a voting trust for his Viacom stock under which the voting trustee would vote his shares in proportion to the votes cast by all Viacom stockholders not party to the voting trust agreement.

[1] Section 76.501(a)(1) states: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: (1) A national television network (such as ABC, CBS, NBC)."

[2] Section 73.658(j)(1)(i) provides in substance that no television network shall, after June 1, 1973, engage in "syndication" within the U.S. (selling or licensing TV programs to U.S. stations for non-network exhibition) or engage in such activity in foreign countries except as to programs of which it is not the sole producer. Section 73.658(j)(1)(ii) prohibits, after August 1, 1972, such networks from acquiring any financial or proprietary interest, except the right to network exhibition, in TV programs produced wholly or partly by any other person.

[3] Specifically, CBS proposed to give it's stockholders one share of Viacom stock for each seven shares of CBS common stock held.

(c) The Commission [4] accepted CBS's proposal, and approved the spin-off transaction, subject to the further condition that CBS officers, directors, and Broadcast Group division presidents, and any individual stockholders with 1 percent or more of CBS common stock, dispose of their Viacom stock by June 3, 1973.

(d) Mr. Iglehart was at the time, and still is, a CBS director. As such, he filed his personal acceptance of the condition described in paragraph 2(c) supra; and, by virtue of his CBS stockholdings, he was entitled to and did receive 6,500 shares of Viacom stock in the spin-off transaction.

(e) Accordingly, he is now under an obligation to sell those 6,500 shares of Viacom stock by June 3, 1973.

3. Section 1071 of the 1954 Internal Revenue Code provides that: "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the Commission with respect to the ownership or control of radio broadcast stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033."

4. It is the Commission's understanding that, within the meaning of Section 1071, the term "radio broadcast stations" refers not only to AM and FM broadcast stations but also to television broadcast stations, and to cable television systems and television broadcast networks (both of which provide a mass communications service ancillary to broadcasting and hence are subject to Commission regulation).[5] It is therefore our opinion that (subject to the continuing effectiveness of the Commission's policies as reflected in Sections 73.658(j)(1)(i) and 76.501(a)(1) of our Rules, at the time of the sale), Mr. Iglehart will be eligible for a tax certificate after timely and appropriate sale of his Viacom common stock in accordance with the requirements set forth by the Commission in *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

5. However, it appears on the basis of the facts set forth in Mr. Iglehart's request that he is not eligible for a tax certificate at this time because no sale or exchange by him of his Viacom stock—certifiable by the Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the Commission with respect to the ownership or control of national television broadcast networks and cable television systems—has occurred.

Accordingly, IT IS ORDERED, That the request, by Mr. J. A. W. Iglehart, of Lutherville, Maryland, for a tax certificate with respect to the sale of stock in Viacom International, Inc., BE HELD IN ABEYANCE pending Mr. Iglehart's notification to the Commission that he has sold his Viacom stock.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[4] In *Columbia Pictures Industries, Inc.*, 30 FCC 2d 9 (1971).

[5] In *Mt. Mansfield Television, Inc.* v. *Federal Communications Commission*, 442 F. 2d 470 (2d Cir., 1971), the Court held that the Commission's syndication rule (Section 73.658), though a "direction regulation of networks," is "supported by evidence and is 'reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting.' *United States* v. *Southwestern Cable Co.* [392 US 157], at 178."

F.C.C. 72-1141

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES, INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	Docket No. 19660 RM-690

NOTICE OF INQUIRY AND PROPOSED RULEMAKING

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION:

1. The Commission has pending before it various petitions and requests all of which relate to the domestic handling of international record traffic. Of greatest immediacy, are proposed tariff revisions filed by the international record common carriers, to become effective March 1, 1973, under which such carriers, rather than their customers, would absorb the landline transmission charges related to the pickup and delivery of international telegrams outside of the gateway cities in which those carriers maintain offices. In essence, these pleadings may be grouped into three separate categories. The first and longest pending is a petition for rule-making filed by ITT World Communications, Inc. (ITT) [1] wherein it is requested that the Formula for the Distribution of Outbound International Traffic (Formula) handled by Western Union Telegraph Company (Western Union) be revised in various aspects. Second, Western Union has filed a petition that this Commission order an increase in the per word charges for the landline haul of full-rate messages from 6.5 cents per word to 13 cents per word with corresponding charges for other classes.[2] Third, there are the above-mentioned proposed tariff amendments, to become effective March 1, 1973, filed by the international record carriers under which they, rather than the customers, would pay the domestic transmission charge for international message telegrams sent by hinterland users directly to present gateway offices or sent by the carriers from such offices directly to hinterland users by telephone, telex, etc.; and applications filed by international carriers for authority to open offices in additional mainland cities.[3] The specific requests and proposals include the following:

(a) Proposed amendments filed by ITT, to its Tariff F.C.C. No. 7[4] which would permit ITT, to absorb all charges incurred for the use of the various

[1] November 27, 1964. *See* RM-690.
[2] *See* petition of Western Union Telegraph Co. dated July 23, 1970.
[3] The "hinterland" is that territory in the contiguous 48 states beyond the limits of the gateways of an international record carrier.
[4] Specifically, 368th Revised Page 1, 151st Revised Page 1A, 11th Revised Page 9, 11th Revised Page 10, 13th Revised Page 11D, 7th Revised Page 70A and 6th Revised Page 70B.

domestic communications media for direct customer access to the international carrier for the pickup and delivery of international message telegrams;

(b) Proposed amendments filed by Western Union International (WUI) to its Tariff F.C.C. No. 12[5] which would have the same effect as that in (a) above;

(c) Proposed amendments filed by RCA Global Communications, Inc. (RCAG) to its Tariff F.C.C. No. 60[6] which would have the same effect as that in (a) above;

(d) An application by ITT[7] under Sections 214 and 222 of the Communications Act for authority to establish 15 operating points in the hinterland for the handling of telex and leased channel services and for the authority to use Wide Area Telephone Service (WATS) for the pickup and delivery of international message telegram traffic in the contiguous 48 states;

(e) An application of RCA Global Communications, Inc. (RCAG)[8] under Section 214 to establish 18 operating points in the hinterland for the handling of telex and leased channel services; and

(f) Application of TRT Telecommunications, Inc. (TRT)[9] for authority under Sections 214 and 222 to establish New York City as a gateway for leased channel services to points in Latin America and the Caribbean.

2. Finally, there is pending before us a petition for review of the action of the Chief, Common Carrier Bureau regarding an application of Western Union for authority to provide Mailgram service between the contiguous states and Hawaii.[10] We are considering this matter separately, as it is not directly related to the questions described above, and expect shortly to issue a decision thereon.

3. All of the foregoing proposals and requests present a complex of issues which are essentially interrelated. They have a common genesis in the so-called domestic telegraph merger legislation which was enacted in 1943[11] and the changes and developments which have occurred since that time. The merger legislation permitted Western Union to merge with the Postal Telegraph Company (Postal) upon the making of certain findings by the Commission. Western Union at the time was not only the major telegraph carrier within the United States, but also provided international telegraph services through its cable division. Postal also provided a more limited domestic message telegraph service and its facilities for pickup and delivery of international traffic were available to the international telegraph carriers. There was concern expressed that if the merger took place between Western Union and Postal, Western Union would be in a position to favor its own cable division in the handling of international telegraph traffic. The legislation proposed to address this problem in two ways: (1) by requiring the eventual divestment by Western Union of its international telegraph operations[12] and (2) by requiring that Western Union distribute outbound international telegraph traffic among the international record carriers and divide the charges for such traffic in accordance with a formula approved or prescribed by the Com-

[5] Specifically 75th Revised Page 1, 6th Revised Page 9, 6th Revised Page 81 and 6th Revised Page 86.

[6] Specifically 300th Revised Page 1, 10th Revised Page 6, 8th Revised Page 65 and 8th Revised Page 66 B.

[7] File No. T–C–2433, filed September 20, 1971.

[8] File No. T–C–2498, filed January 11, 1972.

[9] File No. T–C–2498, filed September 1, 1972.

[10] Western Union proposed to transmit messages from the mainland to post offices in Hawaii for delivery to the addressees, using facilities leased from the Communications Satellite Corporation. The Chief, Common Carrier Bureau advised Western Union by letter of April 19, 1972 that its application was not accepted for filing in view of the Section 222 proscription on Western Union overseas services. The Western Union application for review was filed on May 19 and will be acted on shortly.

[11] 47 U.S.C. § 222(b) (1) (1964).

[12] 47 U.S.C. § 222(c) (2) (1964).

mission.[13] This formula was to be so designed as to insure equitable distribution of traffic and a reasonable division of the tolls for such traffic between the merged domestic carrier and the international carriers.

4. At the present time, the international record carriers provide, in addition to other services, pickup and delivery of international telegraph messages, at their expense, within the so-called gateway cities in which they operate.[14] These cities, for ITT, WUI and RCAG, the three major record carriers, are New York, San Francisco, and Washington. TRT gateway cities are Miami and New Orleans (with the three major record carriers handling leased channel services at Miami). These carriers interconnect with Western Union, which handles international telegraph messages to and from users located outside the gateway cities, with Western Union receiving a portion of the charges for such messages in compensation for its landline services.

5. Both the concept of the gateway and the manner in which traffic may be delivered to points beyond the gateway have been in a constant state of evolution and development since 1943 as the needs of users developed and as technology evolved. As early as 1949 the Commission had occasion to review in detail the pickup and delivery practices of the carriers for traffic originating and terminating in the hinterland. *All America Cables and Radio, Inc.*, 15 F.C.C. 293, (Docket No. 9433). In that proceeding, we accepted the principle, reflected in the tariffs of certain international carriers, that hinterland users could forward outbound messages to an international carrier by telephone, TWX or otherwise and that overseas inbound messages addressed to persons in the hinterland could be delivered by such means where appropriate instructions had been given by the customer. In each instance the domestic handling would be at the customer's expense. We have also, on specific occasions when it appeared to be in the public interest, authorized the international carriers to extend their operations to points outside the gateway cities.[15]

6. Since the merger was authorized in 1943 there have been significant changes both in the composition of international record traffic and in the facilities and services available to handle such traffic. At the time of merger, international message traffic contributed the major portion of total international communications revenues, whereas it now contributes a minor portion of such revenues and a decreasing share of international record carrier revenues. In 1943, the primary, if not the only method of handling international message telegraph traffic in the hinterland, was through the domestic facilities of Western Union (and, prior to merger, of Postal). Since that time, there has been a rapid development in domestic teleprinter exchange and other serv-

[13] 47 U.S.C. § 222(e)(1)(1964).

[14] See 47 U.S.C. § 222(a)(5)(1964), which provides that the international carriers may accept or deliver international telegraph messages in those cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States.

[15] *E.g.*, we have permitted Press Wireless, an international carrier, to operate temporary pickup and delivery offices at national conventions and on similar occasions. We have also expanded the concept of the gateway to include areas beyond the corporate limits of gateway cities when we found good cause for so doing. Metropolitan Areas Case (Docket No. 10335) and Press Wireless, Inc., 21 F.C.C. 511, (1956).

ices. Furthermore, the Commission has recently authorized Western Union to acquire the TWX facilities of American Telephone and Telegraph Company (AT&T) so that, combined with its own Telex service, it has a virtual monopoly over domestic teleprinter exchange traffic. Finally, telephone service has expanded tremendously since 1943 so that it is directly available to the vast majority of the people of the United States. AT&T now offers a service (WATS) whereby, for a fixed monthly charge, a subscriber may make unlimited telephone calls anywhere in the United States. Such service is also offered in the inbound direction and permits subscribers to receive calls from anywhere in the United States at their expense. On the telegraph side, Western Union has, since the domestic merger, closed hundreds of its smaller offices throughout the country and in New York City in an effort to modernize its operations and to follow the shift from over-the-counter to telephone and machine-operated pickup and delivery.

7. As a result of these developments, an increasing amount of international telegraph message traffic is specifically routed via a particular international carrier, including messages filed directly with such carrier by hinterland users, and this trend is expected to continue in the years ahead.

8. It is within the context of the developments outlined above that it is necessary and timely to reevaluate the existing institutionalized methods and practices involved in the pickup and delivery of international traffic originating at or delivered to hinterland points outside of the established gateway cities, including the overall relationship between Western Union and the international record carriers so that the public will be assured of efficient and economic international record communications. We believe this objective will best be achieved by our consideration of all the foregoing matters in their totality.

9. Therefore, rather than now having independent consideration with a separate procedure for each of the above cited matters, we shall institute a general inquiry which will address, on a consolidated basis, the broad and important public interest issues posed by the "direct access" tariffs and the ITT and RCA applications to establish offices in the hinterland and to transmit certain types of traffic over lines to be leased from domestic carriers.[16] Such an inquiry will also treat the technological and operational changes which have taken place affecting the pickup and delivery of telegraph traffic, and the effects thereof on the existing arrangements for the division of tolls between Western Union and the international carriers, as well as the specific per word compensation currently in effect. Finally, the inquiry will give consideration to the current operation of the international formula, and determine whether current conditions and trends require modification of the formula. We will not at this time attempt to define the precise issues to be considered, nor will we now direct the parties to file either written comments on substantive matters or to participate in evidentiary hearings. Rather, as hereinafter prescribed, we will direct all interested parties to recommend specific issues to be considered in view of the matters discussed above, and the specific procedures by which such issues should be resolved in this Inquiry. These recommendations

[16] We will give consideration to the TRT applications for authority to use New York City as a gateway at the same time.

shall be the subject of informal conferences which will be called and conducted by the Chief, Common Carrier Bureau.

10. The Chief, Common Carrier Bureau, shall meet with respondents herein to consider the specific issues to be resolved and the procedures to be used in resolving such issues. Following such meetings, which shall be held with reasonable promptness, the Commission will issue a further memorandum opinion and order specifying issues and procedures to be followed. In such meetings the parties shall strive to resolve all disputed questions through written exchanges, negotiations or stipulation, rather than through cumbersome and time-consuming processes of an adversary proceeding.

11. Returning to the tariffs before us, we do have a threshold question relating to the pending tariffs to become effective on March 1, 1973, pursuant to which the international record carriers would be permitted to pick up or deliver traffic at no additional cost to the customer located outside of the gateway cities. For this purpose, the international carriers would use inward and outward WATS services of the telephone companies as well as TWX and Telex services of Western Union by which such international carriers would accept international message telegrams from points in the hinterland or deliver such messages to points in the hinterland. Western Union contends the tariff revisions should be *rejected* on the following grounds: (a) the practices contained in the filings are expressly prohibited by prior Commission decisions; (b) prior approval pursuant to Section 222 is required to pick up and deliver in the hinterland; (c) prior approval under Section 214 is required to extend service to the hinterland; (d) lawful joint through rates to points on the systems of the domestic carriers cannot be established by absorbing the charges of such carriers without their concurrence or a Section 201(a) finding; (e) the proposed revisions are inconsistent with the legally filed tariff for Western Union's Telex service; (f) the interconnection arrangements proposed are inconsistent with existing through routes established by Western Union and the carriers and with the presently effective division of tolls authorized by the Commission; and (g) the revisions are not in the public interest in that they would jeopardize Western Union's plans to modernize its facilities to provide improved service.

12. The contentions of Western Union must be considered and evaluated in the light of the purposes, background and developments set forth hereinabove. First of all, we wish to make it clear that none of our prior decisions with respect to the handling of traffic in the hinterland accepts the Western Union premise that it was granted some form of exclusive right with respect to the pick up and delivery of international message traffic beyond the gateway cities. We have in the past rejected such contentions. (See paragraph 5 above.) Insofar as the argument with respect to Section 214 is concerned, we believe that it is sufficient to note that a considerable number of past actions taken by Western Union are exactly contrary to the position it now takes. Thus, it has for several years been making use of the public telephone network, *i.e.*, message toll telephone and WATS services, for the intercity pickup and delivery of both domestic and international telegraph traffic without having requested Section 214 authorization. In essence, Western Union assumed, and we believe correctly so, that the use of

the public telephone, TWX, or telex services, as now contemplated by the record carriers, does not involve the construction or acquisition of a line or the operation of any such extended or additional line within the purview of Section 214 of the Act. Accordingly, on the basis of precedent primarily established in connection with activities of Western Union, we find the Section 214 argument to be without merit.

13. With respect to the Section 222 argument of Western Union, it was the intent of Congress that the carriers be restricted to designated gateway cities in accepting or delivering international message telegraph traffic unless and until appropriate authorization under that section had been obtained from the Commission to extend those gateways or to create new ones. The key question, therefore, is whether, as contemplated under the proposed tariff revisions, the use of modern facilities which either did not exist or were in their relative infancy at the time this provision was enacted, were intended to be encompassed within the statutory ban. The above-described tariff filings do not involve or contemplate the duplication of facilities between the existing offices of the carriers and points of pickup and delivery in the hinterland. Rather, the international carriers propose to make use of the existing switched TWX and Telex networks of Western Union or the WATS telephone service network of AT&T to facilitate the pickup and delivery of international traffic originating at or destined to points outside the existing gateways. Western Union or AT&T are to be reimbursed for the use of their respective networks at published tariff rates. The difference between current practice and what is proposed in the tariffs at issue is the absorption by the international carriers of the charges associated with the customers' use of the Telex, TWX or WATS networks. From the user's standpoint, the practices will differ from those currently in effect only to the extent that there will be a reduction in the cost of direct access.

14. However, despite the fact that the carriers do not by their tariff revisions propose to establish offices in the hinterland, we believe that the proposals to absorb the charges for the domestic handling of international telegrams do raise a valid question as to whether Section 222 applies to the subject tariff revisions. Specifically, the question is whether the use of the public telephone, TWX and Telex networks in the way proposed by the carriers constitutes a change in established gateways by such carriers which require prior approval by the Commission as contemplated by Section 222(a)(5) of the Communications Act and whether, in the absence of such prior approval, the proposed tariffs should be rejected.

15. In view of the importance of this threshold question, we feel that it should be promptly resolved, and, we will consider it separately from the other matters under consideration herein. The filing carriers have deferred the effective date of their respective tariff revisions until March 1, 1973, so that there is opportunity for the filing of briefs on the specific question whether the new practice proposed in these tariff revisions requires prior Commission authorization under Section 222. Upon receipt of these briefs and any reply briefs which may be filed, we will hear oral argument. We will then make a determination as to the applicability of Section 222 before undertaking any further consideration of the merits of the proposals. If, in deciding this matter, we

conclude that Section 222 authority is required, the tariffs will, of course, be rejected as conflicting with the statute and returned to the carriers who filed them. The carriers will then be free to file requests for authorization under Section 222 to institute the proposed service. We emphasize that the briefs and oral argument we are ordering herein shall address only the narrow question of the applicability of Section 222 to the proposal by the international carriers to absorb the costs of direct access by means of domestic Telex, TWX and WATS telephone service, and whether approval by the Commission is required as a condition precedent to the filing of such tariffs. If this question is determined in the negative, the broader public interest issues presented by the practices embraced by the tariff provisions involved will be treated in the context of Sections 201 and 202 of the Communications Act within the general inquiry we are hereby instituting.

16. The other arguments of Western Union for rejection are not persuasive. We do not think previous decisions are grounds to reject the proposed revisions. In *All America Cables and Radio*, *supra*, we did not specifically address the question of whether payment of land-line transmission costs by the international carriers rather than the customers would be unlawful, but, rather, permitted to become effective a tariff provision which required the customer to pay such costs. Nor do we think that a through route is sought to be established by the proposed revisions, in view of arrangements relating to interfacing of domestic and international telex systems, which are not considered to be through routes. We agree that there is a conflict with Western Union's Telex tariff; however, there is serious question as to whether the relevant provisions of such tariff will be lawful should the proposed international tariffs become effective. Insofar as Western Union argues inconsistency with the present through routes that it maintains with the record carriers, we think this question is subsumed by the Section 222 question.

Accordingly, IT IS ORDERED, Pursuant to Sections 4(i), 4(j), 201, 202, 205, 214, 222 and 403 of the Communications Act, that an inquiry is instituted to determine the nature and extent of the changes in technology, operation, and economics related to the handling of international record communications and what revisions are necessary or desirable in the public interest with respect to the various matters discussed herein, in light of such changes;

IT IS FURTHER ORDERED, That following the meeting referred to in paragraph ten, a further order shall be issued by the Commission, specifying issues and the procedures for their resolution;

IT IS FURTHER ORDERED, That The Western Union Telegraph Company, ITT World Communications Inc., RCA Global Communications, Inc., Western Union International, Inc., and TRT Telecommunications Corp. are named as parties respondent;

IT IS FURTHER ORDERED, That, in accordance with Section 1.51(a)(3) of the Commission's Rules and Regulations, each entity named as a party herein shall, within 20 days of the release of this order, submit an original and nineteen copies of a brief on the applicability of Section 222 of the Act to the free direct access proposals contained in the ITT, WUI and RCAG tariff revisions; that reply briefs

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may be filed within ten days thereafter; and that oral argument on the matter will thereafter be held before the Commission *en banc* at Washington, D.C., at a date and time to be specified by subsequent order;

IT IS FURTHER ORDERED, That the applications of ITT World Communications Inc., RCA Global Communications, Inc., and TRT Telecommunications Corp. for additional gateway authority shall be retained for appropriate further action in accordance with any decision taken in the inquiry ordered herein; and

IT IS FURTHER ORDERED, That the petition of ITT World Communications Inc., RM–690, to revise the Formula for the Distribution of Outbound International Traffic handled by Western Union and the petition of The Western Union Telegraph Company to increase the per word charges for the landline haul of international message telegrams shall be retained for appropriate further action in accordance with any decision reached in the inquiry ordered herein.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1108

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re LONE STAR TELEVISION SERVICE, INC., LONGVIEW, TEX. For Certificate of Compliance	CAC-174 (TX-210)

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 15, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT; COMMISSIONER WILEY ABSTAINING FROM VOTING.

1. On April 18, 1972, Lone Star Television Service, Inc., proposed operator of a cable television system at Longview, Texas (located in a smaller television market) submitted an "Application for Certificate of Compliance" in which it requests certification for the following television signals:

KTBS-TV (ABC), Shreveport, Louisiana.
KSLA-TV (CBS), Shreveport, Louisiana.
KTAL-TV (NBC), Texarkana, Texas.
KLTV (ABC, NBC), Tyler, Texas.
KTVT (Ind.), Fort Worth, Texas.
KERA-TV (Educ.), Dallas, Texas.

Lone Star's application is opposed by KSLA-TV, Inc., licensee of Station KSLA-TV, Shreveport, Louisiana. The signals proposed by Lone Star were authorized in *Lone Star Television Service, Inc.*, FCC 71-1196, 32 FCC 2d 576, and are grandfathered pursuant to Section 76.65 of the Commission's Rules.

2. In its opposition, KSLA-TV, Inc., argues that Lone Star's application should be denied because its franchise does not comply with the standards of Section 76.31 of the Rules because the franchise (a) contains no statement that Lone Star's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, have been approved by the franchising authority as part of a full public proceeding affording due process; (b) contains no statement that the franchisee shall reasonably extend energized trunk cable to a substantial percentage of its franchising area each year, with such percentage to be determined by the franchising authority; (c) does not specify procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions or require that the franchisee maintain a local business office or agent for these purposes; (d) contains a franchise period of 20 years and (e) includes an intial lump sum payment of $2,500 plus 5½% of the gross monthly maintenance and service

charges paid semi-annually to the city, but Lone Star has presented no special showing of the reasonableness of its franchise fee.

3. KSLA–TV, Inc.'s arguments must be rejected. Lone Star's franchise was granted August 10, 1965. Accordingly, its consistency with Commission requirements is governed by paragraph 115, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326 (1972). Therein, we stated that any system that in reliance on an existing franchise granted prior to March 31, 1972, made a "significant financial investment" or entered into "binding contractual agreements" prior to the effective date of the Rules could request that its inconsistent franchise be grandfathered until March 31, 1977. Lone Star has submitted an affidavit from Richard S. Arnold, its Secretary, in which he states that prior to March 31, 1972, the corporation expended the following sums and entered into the following contractual obligations:

1. Miscellaneous expenses, covering such expenses as legal, engineering, construction, supplies, rent, surveying, taxes, travel, telephone, advertising, salaries, fees and licenses, insurance, postage, dues, etc., totaling $16,906.35.

2. Actual construction expenditures of $41,240.84 representing a $14,560.90 payment on the $143,609.60 contract with the turnkey contractor, A.E.L. Communications Corporation, and $5,837.94 to the local utilities for pole clearances and rearrangements; and $20,842 for towers.

3. Contractual obligations, firm orders for equipment and supplies, and accounts payable totaling $209,653.97 representing the balance due on the turnkey contract of $129,048.70, orders for microwave equipment of $45,540.00, and accounts payable of $34,065.27.

In view of this uncontested evidence, we find that Lone Star has made sufficient financial investments and binding contractual agreements to justify grandfathering the franchise pursuant to paragraph 115 of the *Reconsideration*, *supra*, and Section 76.31 of the Commission's Rules.[1]

In view of the foregoing, we find that a grant of Lone Star's "Application for Certificate of Compliance" filed April 18, 1972, would be consistent with the public interest.

Accordingly, IT IS ORDERED, That, the "Application for Certificate of Compliance" filed April 18, 1972, by Lone Star Television Service, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That, the "Opposition to Application for Certificate of Compliance" filed August 30, 1972, by KSLA–TV, Inc., licensee of Station KSLA–TV, Shreveport, Louisiana, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[1] Additionally, the franchise contains no extreme deviation from our franchise standards. See *Telecable of Spartanburg*, FCC 72–1006, —— FCC 2d ——.

F.C.C. 72–1145

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MELHAR CORP., ST. LOUIS, MO. For Certificate of Compliance	CAC–911 M0063

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On July 26, 1972, Melhar Corporation filed an "Application for Certificate of Compliance St. Louis, Missouri" (CAC–911) in which it proposes to operate a twenty-seven channel cable television system at St. Louis, Missouri, which will offer subscribers the following television signals: KTVI (ABC), KMOX–TV (CBS), KSD–TV (NBC), KETC (Educ.), KPLR–TV (Ind.), KDNL–TV (Ind.), all St. Louis, Missouri; KBMA–TV (Ind.), Kansas City, Missouri; and WTTV (Ind.), Bloomington, Indiana. Public Notice of this application was given August 9, 1972. On September 8, 1972, 220 Television, Inc., licensee of Station KPLR–TV, St. Louis, Missouri, filed an "Opposition to Application for Certification". On September 28, 1972, Melhar filed a "Reply to Opposition," and on October 25, 1972, Melhar filed an "Amendment to Application."

2. 220 Television's Opposition objects only that Melhar's application does not specify in adequate number of Class II and III channels as required by Section 76.251(a)(2) of the Commission's Rules, and that the application does not provide technical capacity for non-voice return communications as required by Section 76.251(a)(3) of the Rules. These objections are fully met by Melhar's amendment which provides; 120 mHz of bandwidth available for immediate or potential use as required by Section 76.251(a)(1) of the Rules; that for each of the eight Class I channels to be utilized, the system will provide at least an additional channel (6 mHz in width) suitable for transmission of Class II or Class III signals as required by Section 76.251(a)(2) of the Rules; and that Melhar will maintain a plant having technical capacity for non-voice return communications as required by Section 76.251(a)(3) of the Rules. We find this amendment a fully adequate response to 220 Television's Opposition. In addition, we note *sua sponte* other deficiencies in Melhar's franchise (e.g., six percent of gross receipts as franchise fee and twenty-five year franchise term) but consider nonetheless that the franchise (approved April 10, 1969) is sufficiently consistent with our requirements to justify a grant until March 31, 1977, to allow franchisor and fran-

chisee adequate time to renegotiate their agreement and to comply with our requirements. E.g., *CATV of Rockford*, FCC 72–1005, —— FCC 2d ——.

In view of the foregoing, we find that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, it is ordered, That the "Opposition to Application for Certification" filed September 8, 1972, by 220 Television, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–911) of Melhar Corporation IS GRANTED and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-1110

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
NEVADA RADIO-TELEVISION, INC., ELY AND MCGILL, NEV.	File No. BPTTV-4175
KUTV, INC., ELY, NEV.	File No. BPTTV-4188
NEVADA RADIO-TELEVISION, INC., WELLS, NEV.	File No. BPTTV-4176
NEVADA RADIO-TELEVISION, INC., AUSTIN, NEV.	File No. BPTTV-4177
WESTERN COMMUNICATIONS, INC., GOLDFIELD AND TONOPAH, NEV.	File No. BPTTV-4178
WESTERN COMMUNICATIONS, INC., WELLS, NEV.	File No. BPTTV-4179
WESTERN COMMUNICATIONS, INC., AUSTIN, NEV.	File No. BPTTV-4181
WESTERN COMMUNICATIONS, INC., ELY AND MCGILL, NEV.	File No. BPTTV-4183
KSL, INC., MCGILL, NEV.	File No. BPTTV-4235
NEW JERSEY TELEVISION BROADCASTING CORP., ELY, NEV.	File No. BPTTV-4200
WASHOE EMPIRE, ELY, NEV.	File No. BPTTV-4214
WESTERN COMMUNICATIONS, INC., EUREKA, NEV.	File No. BPTT-2230
For Construction Permits for New Television Translator Stations	
WESTERN COMMUNICATIONS, INC., POTOSI MOUNTAIN, NEV.	File No. BPTTR-8
WESTERN COMMUNICATIONS, INC., SAWTOOTH MOUNTAIN, NEV.	File No. BPTTR-9
WESTERN COMMUNICATIONS, INC., MONTEZUMA PEAK, NEV.	File No. BPTTR-10
WESTERN COMMUNICATIONS, INC., ELLA MOUNTAIN, NEV.	File No. BPTTR-11
WESTERN COMMUNICATIONS, INC., HIGHLAND PEAK, NEV.	File No. BPTTR-12
WESTERN COMMUNICATIONS, INC., CAVE MOUNTAIN, NEV.	File No. BPTTR-13
WESTERN COMMUNICATIONS, INC., PROSPECT PEAK, NEV.	File No. BPTTR-14
WESTERN COMMUNICATIONS, INC., RUBY MOUNTAINS, NEV.	File No. BPTTR-15
NEVADA RADIO-TELEVISION, INC., AUSTIN SUMMIT, NEV.	File No. BPTTR-16
NEVADA RADIO-TELEVISION, INC., PROSPECT PEAK, NEV.	File No. BPTTR-17
NEVADA RADIO-TELEVISION, INC., CAVE MOUNTAIN, NEV.	File No. BPTTR-18
NEVADA RADIO-TELEVISION, INC., RUBY MOUNTAINS, NEV.	File No. BPTTR-19
For Construction Permits for New Television Translator Relay Stations	

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 14, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT. COMMISSIONER JOHNSON DISSENTING.

1. The Commission has before it for consideration the above-captioned applications for construction permits for new television broadcast translator stations, listed and described in Appendix I hereof, and the above-captioned applications for construction permits for new television translator relay stations, listed and described in Appendix II hereof. On September 25, 1970, the Commission gave notice of the acceptance for filing of the seven applications of Nevada Radio-Television, Inc., and Western Communications, Inc., for construction permits for VHF translators. On December 3, 1970, a petition to deny these applications was filed by Washoe Empire, licensee of television station KTVN, channel 2, Reno, Nevada, and permittee of television station KEKO, channel 10, Elko, Nevada, the latter not yet in operation. Because the petition was filed well beyond the time period specified in section 1.580(i) of the Commission's rules, it is untimely filed as a statutory petition to deny. The matters raised in the petition, however, are of sufficient interest to warrant our consideration of the petition as an informal objection, filed pursuant to section 1.587 of the Commission's rules, and we so regard it. Western Communications, Inc., and Nevada Radio-Television, Inc., are through diverse means, commonly controlled by Donald W. Reynolds, and the two applicants are, therefore, referred to herein jointly as "Donrey". The application (BPTT-2230) of Western Communications for a construction permit for a new UHF translator station and the applications for construction permits for new television translator relay stations are unopposed. Before delving into the merits of the proposals, a brief description of the purpose and functions of the system appears to be necessary.

2. The proposed system is intended to provide television service to sparsely populated areas of Nevada and, in several instances, would represent the first Nevada television service available. To accomplish this purpose, the applicant has devised a system of television translator stations, all but one of which (BPTTV-4177, Austin, Nevada) is to be fed by translator relay stations. None of the relay stations will use a frequency in the 2000 MHz band, which is the band of frequencies allotted for use by television translator relay stations by section 74.602 (h) of the Commission's rules, but instead will use frequencies in the 7000 and 13000 MHz bands which are allocated for use by television broadcast stations for relay purposes. Essentially, there are two systems, one originating from KOLO-TV in Reno and the other from KORK-TV in Las Vegas. Both systems are received off the air initially by a microwave relay station and, by a series of hops, terminate with translators, feeding intermediate translator stations enroute. In several instances, the systems feed two translators at the same site, each serving the same community, so that, where this occurs, the community will receive the signals of both primary stations. Part 74 of the rules contains the television translator rules as well as the rules for microwave relay stations. The system is generally inconsistent with the

rules governing the use of translators and television relay stations and in order to authorize the proposed system, many of these rules must be waived. For example, the rules restrict the use of microwave translator relays to a simple heterodyne type of repeater with operation confined to 6 MHz channel widths in the 2000 MHz auxiliary television band. The applicant has requested waivers of the pertinent rules to permit it to establish relays in the 7000 and 13000 MHz bands by means of the more conventional television broadcast relays of the FM modulated type normally employed by regular television broadcast stations. The modulation system utilized by the latter type of relay requires the demodulation and remodulation of the relayed television signal in order to reestablish a standard television signal before introduction into a conventional translator and rebroadcast to the public. Since the rules provide for translators to rebroadcast standard television signals received directly through space from regular broadcast stations (or other translators and translator relay stations), without significant alteration of the characteristics of the incoming signals except with respect to amplitude, waivers of other applicable rules have been requested. These are listed in Appendix III hereof.

3. *The informal objections.* Before embarking upon a discussion of the various problem areas of the Donrey proposal, we think that it would be appropriate to review the questions raised by Washoe Empire in its informal objections. The first of these relates to the fact that Western Communications proposes a new 100-watt translator to operate on channel 2, serving Goldfield and Tonopah, Nevada (BPTTV–4178). Channel 2 is assigned to Goldfield in the Television Table of Assignments (section 73.606(b) of the rules) and, under the provisions of section 74.702(b)(2) of the rules, a VHF translator operating on such a channel must use 100 watts peak visual power in the city to which the channel is assigned; i.e., the so-called "15-mile rule" (section 73.607(b) of the rules) will not apply. The objector states that the proposed translator would be on a site less than 2 miles from Tonopah (to which channel 9 is assigned and available for use by a 100-watt VHF translator) and about 23½ miles from Goldfield. Thus, the objector contends, the application constitutes an attempt to reallocate channel 2 from Goldfield to Tonopah. The objector also charges that, in Ely and McGill, and in Goldfield [1], operation of the proposed translator would provide Donrey with a virtually complete domination of the means of mass communications. This is so, objector states, because of the newspaper interests of Mr. Donald Reynolds throughout Nevada, including the only newspaper in Ely. The objector also alleges that various translator applications are inconsistent with section 74.732(d) of the rules, particularly in Ely, McGill and Eureka, because the applicants have failed to show that UHF translators authorized to serve those areas do not provide satisfactory service and the alleged intermixture of UHF and VHF service has not, therefore, been justified. Finally, the objector attacks the proposal for use of microwave facilities other than those in the 2000 MHz band. The latter, as will be seen, is the heart of the objections; Washoe Empire has indicated that it does not object to the

[1] Insofar as the objections related to an application (BPTTV–4182) for a translator at Hawthorne and Babbitt, Nevada, they are moot, for this application was dismissed.

translators as such, but insists that if they are to be authorized, it must be in a manner consistent with the Commission's rules.

4. *Frequencies to be used.* With one exception (BPTTR–8, Potosi Mountain, using 13000–13025 MHz), all of the relay stations would use frequencies from 6875 MHz to 7125 MHz, a band which is normally available for relay use only by television broadcast stations (Subpart F, Part 74 of the rules). The applicants have requested frequencies within Band B (6875–7125 MHz) and Band D (12700–13250 MHz) instead of the television translator relay frequencies provided by section 74.602(h) of the rules. The applicants state that the Nevada Department of Highways has recently established a microwave communications network throughout the State and the applicants have worked in cooperation with the Department of Highways for joint construction and use of microwave facilities on common sites. Thus, joint road access, tower and transmitting and receiving antennas will be provided. The applicants say that the 7000 MHz band of frequencies, which they propose to use, is just above the frequency band which the State will use and it will be possible, therefore, to share receiving and transmitting antennas, whereas if the applicants used the 2000 MHz band which is designated for translator relay station use, this would not be possible. There would be substantial savings in cost both for the applicants as well as for the State and because Nevada is a sparsely populated State, cost considerations are vital. In addition, the applicants contend that use of the heterodyne type relays in the 2000 MHz band, as is specified in the rules, would result in an unacceptable deterioration of picture quality because of the number of relay hops required over a distance of more than 450 miles. In addition, the applicants contend, there is no shortage of 7000 MHz facilities in Nevada and none is foreseen in the future; there would be no interference and a system in the 7000 MHz band would be more stable and more easily controlled than a system in the 2000 MHz band. For these reasons, waiver of appropriate rules have been requested in order to permit use of the 7000 and 13000 MHz bands.

5. Donrey has submitted a comprehensive engineering study to support its use of the frequencies it proposes for its multiple hop microwave system. It concludes that the proposal is a technically superior way to bring television to remote areas of this sparsely settled state where, in any event, television signals must be delivered through relay facilities of one sort or another. This is so because the only portions of the state which are within the predicted Grade B contour of any television station are those around Reno and Las Vegas. The balance of the state is devoid of acceptable television service except that provided by translators. Donrey states that the picture degradation resulting from unwanted intermodulation components would make it impossible to provide high quality service throughout Nevada by using conventional translators. These allegations have not been challenged by engineering data submitted by the objector.

6. We share Washoe Empire's concern that a system such as that proposed could result in a serious erosion or our rules governing the use of translators and television broadcast auxiliaries and we also understand its feelings that a system should not be authorized inconsistent with the rules while others, such as Washoe Empire, operate

with conventional translators in conformity with the rules. Yet, our decision must rest on whether the public interest would be served by authorization of this proposal. It cannot be gainsaid that Nevada, with its vast unsettled areas, its rugged terrain, and, save for Reno and Las Vegas, its lack of major centers of population, constitutes a unique situation demanding innovative solutions. We think that there is merit to any proposal which would achieve the results foreseen and we are convinced, based on sound engineering data, that a feasible way is now before us. Certainly we would not authorize such a system elsewhere unless there were to be a similar comprehensive and persuasive showing of comparable unique circumstances. For this reason, we consider the Nevada situation *sui generis* and caution that it must not be regarded as precedent in any other set of circumstances. Should a need develop for the microwave frequencies to be used here, we wish to make it clear that the Donrey system would have to be modified and Donrey takes subject to this understanding. A first television service would be provided to more than 17,000 persons in Nevada and to many more there would be brought a first Nevada television service. There are fewer than one-half million people in all of Nevada, of whom nearly 75% reside in Washoe and Clark counties, where Reno and Las Vegas, respectively, are located. The general population density is stated to be about 2.6 persons per square mile and substantially less than that in the area exclusive of Washoe and Clark counties. The applicant's engineering data, submitted in support of its waiver requests, persuades us that the proposed system could not be established by conventional means without an unacceptable degradation of signal quality, particularly with respect to color. An analysis of the anticipated system performance provided by the applicant suggests that the applicable transmission standards will be satisfied in areas of major concern. To assure technical compliance, we will make the grants subject to the submission of actual measurement data to demonstrate that each translator will comply with applicable television transmission standards prior to the commencement of regular operation. In view of all these factors, we think that special consideration is warranted.

7. *Goldfield and Tonopah (BPTTV–4178).* It is true that the proposed translator to serve Goldfield and Tonopah would operate on a channel assigned only to Goldfield, but that the station would be virtually in Tonopah. The applicant could specify channel 9 in Tonopah and achieve the same results, but at the expense of an existing adjacent channel translator station (K10EX) serving the Goldfield-Tonopah area from the same site. Donrey points out that such a location enables viewers in both communities to receive their television by orienting their receiving antennas in a single direction. The question to be resolved is whether the proposal is realistically one to serve Tonopah and not Goldfield.[2] We think it is clear from the recited facts that it is not. If the public is best served by transmission from a common site, we think that, in this particular situation, it makes little difference whether Donrey specifies channel 9 at Tonopah and serves Goldfield

[2] There can be no reallocation of a television channel by reason of its use by a 100-watt translator because the channel can always be used where it is assigned by a regular television station, requiring termination of operation of the translator.

as well or whether it specifies a Goldfield channel and serves Tonopah as well. We find, therefore, that the application is consistent with section 74.703(b)(2) of the rules.

8. *Intermixture* (*Section 74.732(d)*). Section 74.732(d) prohibits operation of a VHF translator serving areas which receive satisfactory service from one or more UHF television stations or UHF translators unless such intermixture of UHF and VHF service can be justified. The only question now before us on intermixture relates to the Ely-McGill situation. The objector originally raised similar questions with respect to the proposed Hawthorne-Babbitt translator (BPTTV-4182) and to a proposed VHF translator (BPTTV-4180) to serve Eureka, but both were voluntarily dismissed by Donrey in December 1970, and the application (BPTT-2230) which is now pending to serve Eureka is for a UHF translator. The objector states that UHF translators provide service to Ely and McGill, but it has not furnished any facts to support its conclusion that the area is receiving satisfactory service from the UHF translators. Even assuming the validity of this contention, however, it should be apparent that the intermixture rule was never intended to apply to translators operating on channels listed in the Television Table of Assignments, for, as pointed out in paragraph 13, *infra*, the frequencies represented by assigned VHF channels are considered reserved for VHF use in those areas. Moreover, Washoe Empire should not be heard to complain about VHF translators in Ely when it is prosecuting its own application for a VHF translator to operate on channel 8 in Ely and it is the licensee of a 100-watt translator operating on assigned channel 7 (K07KH) in Winnemucca, Nevada, to which four UHF translators (K70EY, K76AB, K78BA, and K80CU) are licensed. We find, therefore, that the applications do not violate the intermixture rule.

9. *Concentration of control.* What we believe that the objector wishes us to consider with respect to its allegations concerning the ownership by Donald Reynolds of newspaper interests in Nevada is best characterized as a concentration of control allegation, although this is far from clear. With respect to the Ely-McGill area, although Reynolds owns the community's only newspaper, it is obvious that the community will have a multiplicity of television services as well as service from standard radio station KELY, Ely, Nevada, in which Mr. Reynolds has no interest. In Goldfield and Tonopah, there is one translator (K12FU) carrying KSBY-TV, San Luis Obispo, California, and a weekly newspaper (*Times-Bonanza and Goldfield News*), in neither of which does Mr. Reynolds have any interest. On the basis of the information before us, therefore, we conclude that there is no concentration of control.

10. *The Ely-McGill situation.* The Ely-McGill situation is an intensely complex one, but, fortunately, the various problems appear to have been resolved by agreement of all of the parties which are involved. First, there are three sets of mutually exclusive applications now pending for construction permits for new television translator station to serve Ely or McGill or Ely and McGill: for channel 3, Ely, Nevada, mutually exclusive applications are pending by Nevada Radio-Television, Inc. (BPTTV-4175) and KUTV, Inc. (BPTTV-4188); for channel 6, Ely, Nevada, mutually exclusive applications are

pending by Washoe Empire (BPTTV–4214) and New Jersey Television Broadcasting Corporation (BPTTV–4200), licensee of station KCPX–TV, channel 4, Salt Lake City, Utah; for channel *13, McGill, Nevada,[3] mutually exclusive applications are pending by Western Communications (BPTTV–4183) and KSL, Incorporated (BPTTV–4235), licensee of station KSL–TV, channel 5, Salt Lake City, Utah. Each of these applications specifies transmitter output power of 100 watts, as required by section 74.702(b) (2) of the rules because, in each case, the channel is assigned to the specified community in the Television Table of Assignments. The three Salt Lake City stations are presently carried in Ely and McGill by three existing 10-watt VHF translators licensed to White Pine Television District No. 1.[4] The Washoe Empire application specifies the primary station as KEKO(TV), channel 10, Elko, Nevada. The pending applications for translators for channels 3 and 6 in Ely and *13 in McGill, plus the three existing translators on channels 7, 9, and 11, represent use of all available VHF frequencies in the area.[5]

11. By an agreement signed by all of the parties, including Washoe Empire, the objector herein,[6] and dated May 23, 1972, it was agreed that the three Salt Lake City applications (BPTTV–4200, KCPX–TV; BPTTV–4188, KUTV–TV; and BPTTV–4235, KSL–TV) would be dismissed, presumably by the Commission; all of the applications which now specify operation with power of 100 watts would be authorized with 10 watts so that all of the Ely-McGill translators would operate with identical power. If approved by the Commission and effectuated by the parties, the service situation in Ely and McGill would appear as follows:

Channel 3—KOLO–TV, Reno, Nevada.
Channel 6—KEKO(TV), Elko, Nevada.
Channel 7—KCPX–TV, Salt Lake City, Utah.
Channel 9—KUTV–TV, Salt Lake City, Utah.
Channel 11—KSL–TV, Salt Lake City, Utah.
Channel 13—KORK–TV, Las Vegas, Nevada.

Present Commission policy allows authorization of a commercial translator [7] on a channel reserved for noncommercial educational television use subject to the condition that operation of such a translator will be terminated immediately upon commencement of operation of any noncommercial educational translator or television station on the channel. Channel *13 is such a channel and Western Communications

[3] The applications for channel *13 in McGill still specify channel 8, as when originally filed. Channel 8 was removed from McGill and channel *13 substituted, as a channel reserved for noncommercial educational use, in June 1972 (*Report and Order* in Docket No. 19463, 35 FCC 2d 351, 24 RR 2d 1855).

[4] The three 10-watt VHF translators are licensed to serve Murry Canyon and Compton Street areas in Ely and McGill, Nevada. KØ7DU carries KCPX–TV via K80BJ, Cave Mountain, Schell Range, Nevada; KØ9EA carries KUTV(TV) via K75AF, Cave Mountain; and K11ÊE carries KSL–TV via K70AT, Cave Mountain.

[5] An effort to rearrange the use of the frequencies so as to permit use of channels 4 and 5 was frustrated when it was found that operation by translators on those channels would be likely to interfere with reception by the UHF translators of their incoming signals from the channel 4 and 5 Salt Lake City TV stations.

[6] In signing the agreement, Washoe Empire expressly did so without prejudice to prosecution of its objections. For this reason, we have discussed and disposed of each objection in detail and independently of the agreement.

[7] A commercial translator is defined as one which carries the programming of a commercial television station, irrespective of the identity of the licensee of the translator. Footnote 3, paragraph 10, *Report and Order* in Docket No. 18861, 36 FR 19588, 23 RR 2d 1504.

has expressed its understanding of the conditional nature of any authorization which it might obtain for operation of a translator on channel *13 in McGill. There is also a problem in the possibility that, upon Commission approval of the arrangement and effectuation by the applicants, someone not privy to the agreement may file an application for a 100-watt translator on one of the assigned channels. Authorization of a 100-watt translator would, of course, cause the lower power translator, operating pursuant to a waiver of the power requirements, to terminate operation.

12. To resolve this problem, we will here provide that, upon authorization of these translators on channels 3 and 6 in Ely and channel *13 in McGill, no applications for commercial 100-watt VHF translators to operate on any of those channels will be accepted for filing. This, of course, does not apply to any applications which may be filed for a noncommercial educational translator to operate on channel *13 in McGill. We make this provision because we are convinced that the public interest is best served by the arrangement agreed upon by the applicants and the viewing public may very well be deprived of television service if we were to permit a party not privy to the agreement to upset the delicate balance which has been achieved through long and arduous negotiation.

13. *Other objections.* By letter dated November 19, 1970, Mineral Television District No. 1, licensee of television translator station K73BS, Hawthorne and Babbitt, Nevada, complained that operation of the translator proposed by Western Communications (BPTTV–4178) to operate on assigned channel 2, Goldfield, Nevada, would interfere with reception by station K73BS of its incoming signals from KTVN, channel 2, Reno, Nevada. It suggests the use of channel 9, Tonopah. We have already discussed and disposed of this latter point. See paragraph 7, *supra.* With respect to the former, no rule or policy presently protects the input of a translator from interference by another translator. This is particularly true where, as here, we are concerned with a channel which is assigned in the Television Table of Assignments for use by a regular television station. The Commission has said that:

> ". . . The frequency represented by a table-assigned channel is considered reserved in that area and, as with a regular television station operating on such a channel, translators so operating are entitled to protection."

Report and Order in Docket No. 18861, paragraph 6, *supra.* Thus, a broadcast station operating on assigned channel 2 in Goldfield has precedence over other stations using the same frequency and if interference would be caused to the input source of station K73BS, the licensee of the UHF translator will have to make other arrangements, as it would be required to do if a regular television station were operating on channel 2 in Goldfield. We will deny the objection.

14. Francis Escobar, operator of a cable television system (fewer than 50 subscribers) in Austin, Nevada, wrote a letter, dated December 1, 1970, objecting to grant of Western Communications' application (BPTTV–4177) for its proposed Austin, Nevada, translator. The only basis for the objection is the claim that the primary station, KOLO–TV, Reno, Nevada, is already received well in the area. There is no claim of electrical interference nor is there any other reason given

for the objection. As pointed out previously, this particular application is the only one which is completely consistent with all of the Commission's rules and policies. If the signal of KOLO–TV were sufficiently strong in Austin—145 miles from Reno—, it is doubtful that the applicant would be disposed to expend its funds on a translator to provide a service which is already present. More important, however, is the fact that the reason given does not constitute adequate grounds for refusing to grant an application. The objection will be denied.

15. In conformity with this Opinion, we will grant several of the applications as proposed, make partial grants of other applications (pursuant to section 1.110 of the Commission's rules) and dismiss others. For example, the single pending application for a UHF translator (BPTT–2230) specifies operation on output channel 50, but this application was filed prior to our adoption of the *Report and Order* in Docket No. 18861, *supra*, which limits UHF translators not operating on channels listed in the Television Table of Assignments to channels from 55 through 69. We will, therefore, grant that application, in part, to specify operation on output channel 57 in lieu of output channel 50. Partial grants will be made of those applications proposing 100 watts in Ely and McGill to authorize them with peak output power of 10 watts in accordance with the terms of the agreement. Some applications will be granted subject to conditions. The application (BPTTV–4183) for Ely and McGill which still specifies channel 8 will be granted in part to specify channel *13.

16. Western Communications is currently involved in an evidentiary hearing in Docket No. 19519 (*Western Communications, Inc. (KORK–TV)*, 35 FCC 2d 517) on its application (BRCT–327) for renewal of the license of station KORK–TV. The hearing is concerned with issues going to the basic qualifications of Western to be the licensee of staiton KORK–TV. Consequently, grant of the applications of Western in this proceeding will be made subject to an appropriate condition based on the outcome of the proceedings in Docket No. 19519. Since there is no comparable proceeding pending with respect to the license of station KOLO–TV, Nevada Radio-Television's applications in this proceeding will be granted without such a condition.

17. For the reasons stated, we find that no substantial or material questions of fact have been raised by the informal objections filed herein and they will, therefore, be denied. We further find that the applicants are qualified to construct, own and operate the proposed translator stations; that waivers of the rules set forth in Appendix III hereof [8] are warranted; and that grant of the applications, as indicated in the succeeding paragraphs of this Order, would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the Agreement, dated May 23, 1972, of Nevada Radio-Television, Inc., KUTV, Inc., Western Communications, Inc., KSL, Incorporated, New Jersey Television Broadcasting Corporation, and Washoe Empire, IS APPROVED, and the above-captioned applications of KUTV, Inc. (BPTTV–4188), KSL, Incorporated (BPTTV–4235), and New Jersey Television Broadcast-

[8] For clarity, a synopsis of each rule involved in this matter has been set forth in Appendix IV.

ing Corporation (BPTTV–4200), ARE DISMISSED, pursuant to section 1.568(a) of the Commission's rules.

IT IS FURTHER ORDERED, That the informal objections filed herein by Washoe Empire, Mineral Television District No. 1, and Francis Escobar, owner and operator of Community Antenna, Austin, Nevada, ARE DENIED.

IT IS FURTHER ORDERED, That sections 74.701(a), 74.702(b)(2), 74.731(b), 74.602(h) and 74.637(a) of the Commission's rules, ARE WAIVED as set forth in Appendix III hereof.

IT IS FURTHER ORDERED, That the following applications ARE GRANTED IN PART, pursuant to section 1.110 of the Commission's rules, in accordance with specifications to be issued:

BPTT–2230, Western Communications, Inc., to specify operation on output channel 57 in lieu of output channel 50.

BPTTV–4175, Nevada Radio-Television, Inc., to specify peak visual output power of 10 watts in lieu of 100 watts.

BPTTV–4183, Western Communications, Inc., to specify operation on output channel 13 in lieu of output channel 8 and to specify peak visual output power of 10 watts in lieu of 100 watts.

BPTTV–4214, Washoe Empire, to specify peak visual output power of 10 watts in lieu of 100 watts.

IT IS FURTHER ORDERED, That the applications of Western Communications, Inc., and Nevada Radio-Television, Inc., listed below, ARE GRANTED, subject to the following condition and in accordance with specifications to be issued:

BPTTV–4175; BPTTV–4176; BPTTV–4178; BPTTV–4179; BPTTV–4181; BPTTV–4183; BPTTV–2230.

"Subject to the condition that, prior to the commencement of regular operation, measurement data shall be submitted, with the license application, as required by section 73.687 of the Commission's rules, in accordance with the procedures set forth in Subpart F, Part 2, of the Commission's rules, including all necessary photographs and descriptive information to assure compliance with equipment performance and transmission standards."

IT IS FURTHER ORDERED, That the applications of Nevada Radio-Television, Inc. (BPTTV–4175), Western Communications, Inc. (BPTTV–4183), and Washoe Empire (BPTTV–4214), ARE GRANTED SUBJECT TO THE FOLLOWING CONDITION:

"Prior to the commencement of construction, the permittees shall furnish to the Commission all necessary information to identify the transmitting apparatus to be used, including manufacturer, type number, and rated power output."

IT IS FURTHER ORDERED, That the application (BPTTV–4183) of Western Communications, Inc., for a construction permit for a television translator station to operate on channel *13, Ely and McGill, Nevada, IS GRANTED SUBJECT TO THE FOLLOWING CONDITION:

"Operation of the television translator station authorized herein shall not preclude acceptance for filing and grant of any application for a construction permit for a new noncommercial educational television translator station to operate on channel *13, McGill, Nevada, nor shall the filing of such an application create a condition of mutual exclusivity with the translator station authorized herein."

"Immediately upon commencement of operation of a noncommercial educational television broadcast translator station on channel *13, McGill, Nevada, the translator station authorized herein shall terminate operation on channel *13."

IT IS FURTHER ORDERED, That the application (BPTTV-4177) of Nevada Radio-Television, Inc., IS GRANTED, in accordance with specifications to be issued.

IT IS FURTHER ORDERED, That the above-captioned applications of Western Communications, Inc., ARE GRANTED SUBJECT TO THE FOLLOWING CONDITION:

"This authorization is without prejudice to whatever action the Commission may deem appropriate as a result of the outcome of the proceedings in Docket No. 19519."

IT IS FURTHER ORDERED, That, so long as the 10-watt translators authorized herein operate on channels 3 and 6, Ely, Nevada, and *13, McGill, Nevada, NO APPLICATION WILL BE ACCEPTED FOR FILING which specifies operation of a commercial translator on any of these channels with transmitter output power in excess of 10 watts.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

38 F.C.C. 2d

APPENDIX I

APPLICATIONS FOR CONSTRUCTION PERMITS FOR NEW TELEVISION BROADCAST TRANSLATOR STATIONS

File No.	Applicant	Principal community(ies)	Input	Output channel	Power (watts)	Primary station
BPTTV-4175 [1]	Nevada Radio-Television, Inc.	Ely and McGill	Via BPTTR-18 7100-7125 MHz	[2] 3	100	KOLO-TV, channel 8, Reno, Nev.
BPTTV-4176	Nevada Radio-Television, Inc.	Wells	Via BPTTR-19 6975-7000 MHz	12	10	Do.
BPTTV-4177	Nevada Radio-Television, Inc.	Austin	Off-the-air Channel 8	12	10	Do.
BPTTV-4178	Western Communications, Inc.	Goldfield and Tonopah.	Via BPTTR-10 6875-6900 MHz	[3] 2	100	KORK-TV, channel 3, Las Vegas, Nev.
BPTTV-4179	Western Communications, Inc.	Wells	Via BPTTR-15 6900-6925 MHz	6	10	Do.
BPTTV-4181	Western Communications, Inc.	Austin	Via BPTTR-14 7100-7125 MHz	6	10	Do.
BPTTV-4183 [4]	Western Communications, Inc.	Ely and McGill	Via BPTTR-13 7025-7050 MHz	[5] 13	100	Do.
BPTTV-4188 [6]	KUTV, Inc.	Ely	Via K75AF, Ely, Nev	[2] 3	100	KUTV, channel 2, Salt Lake City, Utah.
BPTTV-4200 [7]	New Jersey Television Broadcasting Corp.	Ely	Via K80AI, Ely, Nev	[8] 6	100	KCPX-TV, channel 4, Salt Lake City, Utah.
BPTTV-4214 [9]	Washoe Empire	Ely	Off-the-air Channel 10	[8] 6	100	KEKO, channel 10, Elko, Nev.
BPTTV-4235 [10]	KSL, Inc.	McGill	Via K70AT, Ely, Nev	[5] 13	100	KSL-TV, channel 5, Salt Lake City, Utah.
BPTT-2230	Western Communications, Inc.	Eureka	Via BPTTR-13 7025-7050 MHz	50	100	KORK-TV, channel 3, Las Vegas, Nev.

[1] Mutually exclusive with BPTTV-4188.
[2] Channel 3 is assigned to Ely, Nevada, in the Television Table of Assignments (§ 73.606(b) of the rules).
[3] Channel 2 is assigned to Goldfield, Nevada, in the Television Table of Assignments.
[4] Mutually exclusive with BPTTV-4235.
[5] Channel *13 is assigned to McGill, Nevada, in the Television Table of Assignments and is reserved for noncommercial educational use.
[6] Mutually exclusive with BPTTV-4175.
[7] Mutually exclusive with BPTTV-4214.
[8] Channel 6 is assigned to Ely, Nevada, in the Television Table of Assignments.
[9] Mutually exclusive with BPTTV-4200.
[10] Mutually exclusive with BPTTV-4183.

APPENDIX II

APPLICATIONS FOR CONSTRUCTION PERMITS FOR NEW TELEVISION TRANSLATOR MICROWAVE RELAY STATIONS

File No.	Applicant	Location	Input frequency	Output frequency	Receiving point	Primary station
BPTTR-8	Western Communications, Inc.	Potosi Mountain	Off-the-air Channel 3	13,000-13,025 MHz	BPTTR-9	KORK-TV, channel 3, Las Vegas, Nev.
BPTTR-9	do	Sawtooth Mountain	13,000-13,025 MHz	6925-6950 MHz	BPTTR-10	Do.
BPTTR-10	do	Montezuma Peak	6925-6950 MHz	6875-6900 MHz	BPTTV-4178	Do.
BPTTR-11	do	Ella Mountain	Off-the-air Channel 3	7075-7100 MHz	BPTTR-12	Do.
BPTTR-12	do	Highland Peak	7075-7100 MHz	6900-6925 MHz	BPTTR-13	Do.
BPTTR-13	do	Cave Mountain	6900-6925 MHz	7025-7050 MHz	BPTTR-14, BPTTR-15, BPTTV-4183, BPTT-2230.	Do.
BPTTR-14	do	Prospect Peak	7025-7050 MHz	7100-7125 MHz	BPTTV-4181	Do.
BPTTR-15	do	Ruby Mountains	7025-7050 MHz	6900-6925 MHz	BPTTV-4179	Do.
BPTTR-16	Nevada Radio-Televiston, Inc.	Austin Summit	Off-the-air Channel 8	6900-6925 MHz	BPTTR-17	KOLO-TV, channel 8, Reno, Nev.
BPTTR-17	do	Prospect Peak	6900-6925 MHz	6950-6975 MHz	BPTTR-18	Do.
BPTTR-18	do	Cave Mountain	6950-6975 MHz	7100-7125 MHz	BPTTR-19, BPTTV-4175	Do.
BPTTR-19	do	Ruby Mountains	7100-7125 MHz	6975-7000 MHz	BPTTV-4176	Do.

APPENDIX III

RULES WAIVED BY THE COMMISSION

BPTTV–4175: Ely and McGill, Nev	74.701(a) 74.702(b)(2) 74.731(b)
BPTTV–4176: Wells, Nev	74.701(a) 74.731(b)
BPTTV–4173: Goldfield and Tonopah, Nev	74.701(a) 74.731(b)
BPTTV–4179: Wells, Nev	74.701(a) 74.731(b)
BPTTV–4181: Austin, Nev	74.701(a) 74.731(b)
BPTTV–4183: Ely and McGill, Nev	74.701(a) 74.702(b) 74.731(b)
BPTT–2230: Eureka, Nev	74.701(a) 74.731(b)
BPTTV–4214, BPTTR–8–BPTTR–19: Ely, Nev	74.702(b)(2) 74.602(h) 74.637(a)

APPENDIX IV

§74.701(a)	Defines a television broadcast translator station as a broadcast station which rebroadcasts the signal of a television station another television translator station, or a television translator relay station by means of direct frequency conversion and amplification of the incoming signals without significantly altering the characteristics of the incoming signal except its frequency and amplitude.
§74.702(b)(2)	Requires VHF translators operating on channels listed in the Television Table of Assignments to be operated with transmitter power of 100 watts in the listed city and provides that the "15-mile rule" (§73.606(b)) will not apply to such translators.
§74.731(b)	Provides that a television translator station may be used only for the purpose of retransmitting the signals of a television station, another television translator station, or a television translator relay station which have been received directly through space converted to a different channel by simple heterodyne frequency conversion and suitably amplified.
§74.602(h)	Specifies that certain frequencies in Band A (1990-2110 MHz) may be used by TV translator relays on a secondary basis to television pickups, television STL's or television-intercity relays. The upper 6 MHz of each channel in Band A (except between 2450 and 2500 MHz) may be used by translator relays as listed in the rule.
§74.637	Television translator relay stations may use only amplitude modulation (A5) for the visual signal and frequency modulation (F3) for the aural signal obtained by simple heterodyne frequency conversion of the signals of a television broadcast station. The electrical characteristics of the incoming signal may not be significantly altered except with respect to frequency and amplitude.

F.C.C. 72-1151

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST OF NBC FOR WAIVER OF THE PRIME TIME ACCESS RULE IN CONNECTION WITH ITS "ACADEMY AWARDS" PROGRAM ON MARCH 27, 1973

MEMORANDUM OPINION AND ORDER

(Adopted December 14, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. The Commission here considers one of various requests for waiver of the prime time access rule (Section 73.658(k)) contained in a "Request for Waivers" filed by National Broadcasting Company, Inc. (NBC) on October 31, 1972. The request involved here is for waiver with respect to the "Academy Awards" program on Tuesday, March 27, 1973. NBC has asked for expedited action on this request because it has to make plans very early in December for the other programming which will be presented that evening if waiver is granted or that which will be telecast if waiver is denied.

2. The question and problem involved is the same as that which we considered in granting waiver for this program in 1972, in *National Broadcasting Company, Inc.*, 33 FCC 2d 743 (adopted February 23, 1972). Unlike network programs other than sports, the Academy Awards program will be presented on a live, simultaneous basis throughout the continental U.S., for about two hours starting at 10 PM E.T., or 9 PM C.T., 8 PM M.T. and 7 PM P.T. NBC plans to present two hours of other network programs that evening, before the Academy Awards in the Eastern and Central time zones (8–10 and 7–9 respectively); this scheduling does not present any problem in these zones, which contain some 80% of the top 50 markets and their prime time homes, because the amount of prime time involved is no more than three hours (the last hour of the special program falls outside of prime time). However, in the Western part of the nation, all four hours of the network material would fall in prime time. In the Pacific zone, the two hours of other network material will be presented starting at about 9 PM P.T., after the Awards show; and in the Mountain zone, apparently, one hour of the other material will be presented before the Awards program and one hour after it (6–7 and 9–10 M.T. respectively). This would mean four hours of network prime time material on this evening in those time zones. NBC asserts, as it did previously, that there is a significant public interest in enabling Western viewers to watch the same programs on

these evenings as do Eastern viewers in the time zones where most of the major markets are located.

3. We are of the view that waiver is warranted in this case, as we concluded it to be in the decision mentioned, and for the same reasons. It is true that one factor mentioned in that decision was the "transitional" character of the 1971–72 year, the first in operation under the new rule, and this, of course, no longer pertains. However, we have since taken other actions granting waivers in such cases, where live, simultaneous broadcasting throughout the continental U.S. is involved, and the general principle thus established appears to apply in this case. See *Democratic National Telethon Committee*, 35 FCC 2d 770 (June 1972); *NBC et al.*, FCC 72–723, 25 R.R. 2d 101 (August 1972); *KOOL–TV*, FCC 72–735, 25 R.R. 2d 149 (August 1972); various sports events, FCC 72–782, 25 R.R. 2d 228 (August 1972); *NBC et al.*, FCC 72–930, 25 R.R. 579 (October 1972); and *Station KMGH–TV*, FCC 72–1034 (adopted November 15, 1972, concerning the presentation of the CBS "Miss Teenage America" pageant by a station in the Mountain time zone). Possible modification of the prime-time access rule to take this type of situation generally into account is among the matters proposed in the pending general rule-making proceeding concerning that rule, Docket 19622 (pars. 32–34 of the Notice therein).

4. It does not appear that any impact on the availability of prime time to non-network sources from grant of waiver in this "one-time" situation will be significant, and accordingly waiver is granted at this time, since expedited action has been requested for what appear to be substantial reasons. However, since this matter is under consideration in the over-all Docket 19622 rule making proceeding, it does not appear appropriate to act on further requests of this sort (except for those now pending before us, all involving sports events) until after at least the initial comments in that proceeding have been reviewed (they are due December 22.)

5. Accordingly, IT IS ORDERED, That NBC-affiliated or owned stations in the Mountain and Pacific time zones MAY PRESENT, on Tuesday, March 27, 1973, two hours of NBC network programming during prime time in addition to the NBC "Academy Awards" program.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-1120

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INQUIRY INTO PROBLEMS OF PUBLIC COAST RADIOTELEGRAPH STATIONS	Docket No. 19544

ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER CONCURRING IN THE RESULT:

1. In its Notice of Inquiry in the instant matter, released July 20, 1972 (37 F.R. 15197), the Commission directed, among other things, that each licensee supply specified technical information regarding transmitters in service and, in addition, information regarding costs associated with any changes to equipment required to bring that equipment into conformity with the Commission's type acceptance requirements.

2. As a part of its requirements for type acceptance, the Commission's rules (Part 81, section 81.137(d)) require that transmitters authorized to be used at public coast radiotelegraph stations conform, on January 1, 1973, with the level of suppression of spurious emissions as set forth in Part 81, section 81.140. Three licensees of public coast radiotelegraph stations have stated that the cost of complying with this requirement represents a substantial investment.

3. The requirement for conformance of these transmitters with this spurious emission requirement comes into force at a time when:

(a) Transmitters at stations which the licensee has requested be closed would be required to conform, notwithstanding the fact that those transmitters will be removed from service if the application to close is granted by the Commission as a part of its decision in the instant proceeding.

(b) Transmitters at public coast radiotelegraph stations for which no application to close has been filed may be discontinued, or their existing use affected, depending upon the nature of the decision reached by the Commission in the instant proceeding.

(c) A substantial and unnecessary expense in the modification or replacement of affected transmitters may be avoided if the Commission's decision in the instant proceeding were available at this time, or if the effective date for conformance with the spurious emission requirements were postponed until the Commission's decision in the instant proceeding is available.

4. In view of the above we find that it would be unreasonable to require the licensees of the subject radio stations, at substantial expense, to install equipment which may be used for only a temporary period and that the rules should be amended to provide relief as set

forth in the attached Appendix. We also conclude that in granting this relief there will be no significant adverse effect on the efficiency of radio communications or degradation of the quality of service to the public.

5. Since the radio stations involved must, pursuant to the rules, comply with the equipment requirements by January 1, 1973, there is not sufficient time to publish a routine general notice of rule making in this case if relief is to be provided. Therefore, the furnishing of prior notice of rule making in this instance is not practicable, and the prior notice and effective date provisions of 5 USC 553(b) do not apply.

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) and 303 (e), (f) and (r) of the Communications Act of 1934, as amended, Part 81 of the Commission rules IS AMENDED effective December 29, 1972 as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 81, Stations on Land in the Maritime Services and Alaska-Public Fixed Stations, is amended as follows:

1. In Section 81.137, paragraph (d) is amended to read as follows:

§ 81.137 Acceptability of transmitters for licensing

* * * * * * *

(d) Each radiotelegraph transmitter operating on frequencies below 27.5 MHz and authorized for use at public coast radiotelegraph stations (other than transmitters authorized solely for developmental stations) after January 1, 1971, must be of a type which has been type accepted by the Commission: *Provided, however,* That nontype accepted transmitters installed at coast radiotelegraph stations and operating on any frequency below 27.5 MHz prior to January 1, 1971, may continue to be used until further Order which will be based on information to be derived from the Notice of Inquiry in Docket No. 19544 provided such nontype accepted transmitters shall, on a day-to-day basis, conform to all of the technical standard requirements of Subpart E of Part 81 of this chapter, except those set forth in Section 81.140 of this Part.

F.C.C. 72R-368

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications	Docket No. 19566
RADIO DINUBA CO., DINUBA, CALIF.	File No. BPH-7567
KORUS CORP., DINUBA, CALIF.	Docket No. 19567
For Construction Permits	File No. BPH-7657

MEMORANDUM OPINION AND ORDER

(Adopted December 8, 1972; Released December 12, 1972)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. Before the Review Board is a motion to delete and enlarge issues, filed September 7, 1972, by Radio Dinuba Company (Radio Dinuba), requesting deletion of the air hazard issues against it, and the addition of a Rule 73.315(b) and (d) issue, as well as a *Suburban* issue against Korus Corporation (Korus). Each requested issue will be discussed seriatim.[1]

DELETION OF AIR HAZARD ISSUE AGAINST RADIO DINUBA

2. Radio Dinuba, supported by the Broadcast Bureau, seeks deletion of the air hazard issue designated against it by the Commission in the designation Order on grounds that the Federal Aviation Administration granted clearance, which became final on July 19, 1972, prior to the issuance of the Commission's designation Order, released on August 17, 1972. In light of the FAA's grant of clearance and in accordance with the Commission's practices, the Board will delete the issue. See WMID, Inc., 12 FCC 2d 512, 12 RR 2d 781 (1968); *D. H. Overmeyer Communications Co.*, 2 FCC 2d 521, 7 RR 2d 197 (1966).

ADDITION OF RULE 73.315(B) AND (D) AGAINST KORUS

3. Alleging that shadowing of the proposed Korus signal as it passes over Smith Mountain, located two to three miles northeast of Dinuba, would result in less than adequate coverage of Dinuba, Radio Dinuba requests addition of an issue to determine whether the Korus operation would comply with the coverage provisions of Rules 73.315(b)

[1] Also before the Review Board are the following related pleadings: (a) Broadcast Bureau's comments, filed September 19, 1972; (b) opposition, filed September 20, 1972, by Korus; and (c) reply, filed October 3, 1972, by Dinuba. Also, there are the following petitions, motion to strike reply, filed October 4, 1972, by Korus, and motion to accept late filed pleading, filed October 5, 1972, by Radio Dinuba, Korus, citing Commission's Rules 1.294(a) and 1.4(f), (g), and (h), filed a motion to strike Radio Dinuba's reply because it was filed on October 3, 1972, when it was due on October 2, 1972. In response to Korus' motion, Radio Dinuba field a motion to accept late filed pleading in which it explains that it had miscalculated the time. We believe the error was unintentional and the filing was not substantially late; therefore, basic fairness compels us to accept the late filed pleading. See *D. H. Overmeyer Communications Co.*, 4 FCC 2d 496, 8 RR 2d 96 (1966).

and (d).[2] The Broadcast Bureau, which did not have the detailed engineering data contained in Korus' opposition, supports Radio Dinuba's request. Korus opposes the request with a detailed engineering showing.

4. In support of its request, Radio Dinuba submitted an engineering report which included profile graphs of paths along azimuths of 197.5 and 200.6 degrees from the proposed Korus site across Smith Mountain. Radio Dinuba's showing does not depict the city limits of Dinuba; however, Korus has submitted a map depicting such limits which Radio Dinuba has not questioned. In addition, Korus has submitted eight profile studies which indicate no shadowing of Dinuba.

5. The Board's review of the engineering data attached to the pleadings establishes that Radio Dinuba's allegations are insufficient to warrant addition of an issue to inquire into the coverage which the Korus proposal will provide to Dinuba. As Korus establishes in its engineering reply, the 197.5 degree radial utilized by Radio Dinuba is irrelevant since it does not pass through any part of Dinuba. When the city limits are reflected on the 200.6 degree radial utilized by Radio Dinuba, it is established that the indicated shadow area does not reach Dinuba. Radio Dinuba's pleading does not challenge Korus' opposition showing, merely implying, without adequate support, that a question remains as to coverage in "other areas". This implication is patently insufficient. Rule 1.229(c).

ADDITION OF A SUBURBAN ISSUE AGAINST KORUS

6. Radio Dinuba also requests a *Suburban* issue against Korus. Radio Dinuba argues, Korus' community survey was not conducted by an "officer, director, or stockholder of the applicant," contrary to the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Korus' application indicates that Michael Minasian, the President, Director and 100% owner of Korus, did not participate in taking the survey of community leaders or members of the general public, nor did any other officer or director of the applicant participate. Instead, prospective employees of the proposed station conducted the entire survey, Radio Dinuba maintains.

7. Both the Broadcast Bureau and Korus oppose the request. Considered together the various allegations of the pleadings present the question of whether Korus' delegation of the survey interviews of community leaders and of the general public, to proposed management-level personnel, as well as to proposed non-management personnel, comports with the requirements of Question and Answer 11 of the *Primer*.

8. The Review Board will deny Radio Dinuba's request for a *Suburban* issue. The Commission's *Primer*, *supra*, in Q. & A. 11(a) specifies that principals, management-level employees, or prospective manage-

[2] Rule 73.315(b) specifies, in part, that a transmitter site will be selected which is as high and as near the center of the proposed service area as possible, and the "location should be so chosen that line-of-sight can be obtained from the antenna over the principal city or cities to be served; in no event should there be a major obstruction in this path." Rule 73.315(d) pertains to the taking of field tests from a proposed site where a questionable antenna location is proposed.

ment-level employees "must be used to consult with community leaders", and Q. & A. 11(b) specifies that proposed staff who are below the management level may conduct the general public surveys under the supervision of management-level personnel. The *Primer* states that management-level employees are the "decision-making personnel of the applicant." Korus' May 30 amendment to Section IV–A, Part I of its application shows that the community ascertainment surveys of both community leaders and the general public were conducted by two management-level personnel—Torosian, the proposed station General Manager, and Carlson, the proposed station Operations Manager and Technical Director. To the extent that some interviews were conducted by proposed staff members below management level, this was done under the supervision of Torosian. In most part, the persons interviewed by the proposed staff members appear to be from the general public. In any event, we do not believe that 45 interviews out of 377 taken by prospective non-management-level personnel reflects adversely on Korus' community ascertainment survey to warrant addition of a *Suburban* issue. *Cf. WPIX, Inc.*, 34 FCC 2d 419, 24 RR 2d 59 (1972); *Southern Broadcasting Co.*, 26 FCC 2d 992, 20 RR 2d 677 (1970). With respect to Korus' reliance on *Atlantic Broadcasting Co.*, 5 FCC 2d 719, 8 RR 2d 991 (1966), and its contention that the Review Board lacks jurisdiction to consider the request for a *Suburban* issue, we believe that *Atlantic* requires us to assume jurisdiction under the circumstances here. The applicable test stated in *Atlantic, supra*, reads, as follows: "where there had been a *thorough* consideration of the particular question in the designation order, the subordinate officials would be expected, in the absence of new facts or circumstances, to follow our [the Commission's] judgment as the law of the case." *Cf. Jefferson Standard Broadcasting Company*, 25 FCC 2d 599, 20 RR 62 (1970); *Northwest Broadcasters, Inc.* (*KBVU*), 8 FCC 2d 1024, 10 RR 2d 714 (1967). In the instant case, the Commission did not mention Korus' community survey in the designation Order, and, in our view, a predesignation Commission letter of inquiry is no substitute for the type of discussion required in a designation order establishing the Commission's consideration and judgment on a particular matter. Hence, we have considered the substance of the question presented by the request for a *Suburban* issue, and for reasons already set forth above we deem the request wholly lacking in merit.

9. Accordingly, IT IS ORDERED, That motion to delete and enlarge issues, filed September 7, 1972, by Radio Dinuba Company, IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and

10. IT IS FURTHER ORDERED, That Issue 3 (the air hazard issue) IS DELETED; and

11. IT IS FURTHER ORDERED, That motion to strike reply, filed October 4, 1972, by Korus Corp., IS DENIED; and motion to accept late filed pleading, filed October 5, 1972, by Radio Dinuba Company, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1117

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ALBERT JOHN WILLIAMS AND JACK M. REEDER, D/B AS RADIO NEVADA, LAS VEGAS, NEVADA For Construction Permit	Docket No. 16115 File No. BP-16524

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 18, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE NOT PARTICIPATING.

1. Under consideration are: (a) petition for reconsideration of an order in this proceeding (FCC 72-126, 33 FCC 2d 589), released February 14, 1972, filed by WGN Continental Broadcasting Company (WGN) on March 15, 1972; (b) an opposition filed March 28, 1972, by Albert John Williams and Jack M. Reeder, d/b as Radio Nevada (Radio Nevada); and (c) comments filed March 29, 1972, by the Chief, Broadcast Bureau (Bureau).

2. By our order, FCC 69-945, 19 FCC 2d 556, released September 8, 1969, action on an application by WGN for review of a Decision of the Review Board, 15 FCC 2d 324, released December 3, 1968, granting the captioned application was held in abeyance until termination of the proceeding in Docket No. 18616 involving an application of Trans America Broadcasting Corporation for renewal of licenses of stations KTYM and KTYM-FM, Inglewood, California. It was indicated in the order that action was being deferred because the proceeding in Docket No. 18616 involved issues respecting the qualifications of the licensee of KTYM and KTYM-FM which has the same principals as the applicant in the instant proceeding. In a Decision in the Docket No. 18616 proceeding adopted February 2, 1972 (FCC 72-94, 33 FCC 2d 596), the Commission imposed a $5,000 forfeiture but granted a short term renewal of each of the station licenses for a period of one year.[1] The Commission further stated therein that (at p. 602):

> We do expect, however, that Trans America will institute procedures to assure future compliance with all Commission rules and requirements, particularly those concerning proper licensee control of foreign language programming and the proper filing of time brokerage contracts. At the end of the one year renewal period, the Commission will examine with close scrutiny Trans America's efforts in this regard, and if these efforts fall short of compliance, we will then take further appropriate action.

3. Thereafter, in an order released February 14, 1972 (FCC 72-126, 33 FCC 2d 589), the Commission, noting that the principals of KTYM and KTYM-FM had been found to possess the requisite qualifications

[1] The Initial Decision, FCC 70D-54, 33 FCC 2d 606, released December 18, 1970, had also provided for one year renewals.

to be a broadcast licensee, denied WGN's application for review. In its petition for reconsideration of that order, WGN alleges that action on the application for review was premature; that the Decision in Docket No. 18616 did not finally adjudicate the qualifications of Trans America's principals since it merely granted short term one year renewals with a proviso that the licensee's performance would be reviewed at the end of such probationary period; that the legal effect of a short term renewal is nothing more than a postponement of the public interest finding required by Section 307 (d) of the Communications Act and that the grant of a short term renewal in Docket No. 18616 was therefore in effect a ruling by the Commission that it was unable at this time to make the required public interest finding with respect to Messrs. Williams and Reeder who are principals of Trans America and Radio Nevada. WGN further alleges that practical considerations of sound administrative procedure militate against a grant of the construction permit to Radio Nevada which resulted from the denial of the application for review; that if review of performance of the licensee of KTYM and KTYM–FM at the end of the license period reveals continued non-compliance with the rules it will be necessary to undo the authorization granted to Radio Nevada in the instant proceeding.

4. The petition is opposed by Radio Nevada and by the Chief, Broadcast Bureau. We believe that the petition must be denied.

5. WGN's contention that a question remains as to the character qualifications of Radio Nevada's or Trans America's principals is erroneous. While we found deficiencies in the operation of KTYM and KTYM–FM which must be remedied, we would not have granted even a one year renewal unless we were satisfied as to the licensee's character qualifications. As for Radio Nevada, our denial of review left in effect the Review Board's decision that the award of a construction permit would serve the public interest. In view of the foregoing, and our express holding in the February 14, 1972 order that the principals of KTYM and KTYM–FM "possess the requisite qualifications to be a licensee of this Commission," we find no basis for WGN's contention that the character issues have not been resolved.

6. Further, it does not appear appropriate in this situation as suggested by WGN that we exercise our discretion to defer final action in this proceeding until expiration of the short term renewal of licenses of stations KTYM and KTYM–FM. This case has been pending for a considerable period and after careful and thorough study, the Commission concluded that favorable action on the Radio Nevada application is warranted. To further postpone a final decision because of the possibility that the principals of the applicant may not remedy the deficiencies in station operations called to their attention would not only be unfair to Radio Nevada but it would be inconsistent with the public interest because of the resultant delay in the commencement of a new broadcast service for a substantial number of people. Should it develop after expiration of the short term renewal that the licensee has failed to correct the deficiencies noted in the operation of KTYM and KTYM–FM, appropriate action can be taken at that time with

respect to those stations and to the construction permit awarded to applicant in this proceeding.

7. Accordingly, IT IS ORDERED that the petition for reconsideration filed March 15, 1972 by WGN Continental Broadcasting Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1127

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
USE OF RECORDING DEVICES IN CONNECTION
WITH TELEPHONE SERVICE

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 20, 1972)

BY THE COMMISSION:

1. Prior to 1948, the tariffs of the telephone companies prohibited telephone subscribers from using customer-provided recording devices in connection with the telephone company-provided interstate and foreign message toll-telephone service or facilities. After a general investigation and hearing in Docket 6787, the Commission ruled in 1947 that such tariffs were unjust and unreasonable within the meaning of Sec. 201(b) of the Act and, in 1948, the Commission ordered such tariffs cancelled in favor of revised tariffs that would permit the use of such customer-provided devices provided that certain safeguards were imposed as prescribed by the Commission. The principal safeguard ordered by the Commission was that such devices could be used only if accompanied by connecting arrangements provided by the telephone carrier which would, among other things, transmit to the parties an automatic tone warning known as the "beep tone." 11 F.C.C. 1033 (1047); 12 F.C.C. 10005 (1947)); 12 F.C.C. 1008 (1948).

2. The "beep tone" requirement was based upon "the importance and desirability of privacy in telephone conversations" and the conclusion by the Commission that "such conversations should be free from any listening-in by others that is not done with the knowledge and authorization of the parties to the call." The Commission decided that "the use of recording devices should be permitted only when measures are in effect that assure notification to the parties that their conversation is being recorded", and that the transmission of a distinctive "beep tone" (plus a publicity program with regard thereto) was considered to be the best of the optional modes available at that time for providing such notification to the parties to telephone conversations. (11 F.C.C. pages 1050–53) The presently effective interstate (and intrastate) tariffs are in accord with the Commission's original decisions and orders. Thus, in the last 25 years the "beep tone" has become recognized throughout the United States as an automatic audible warning to a party to a telephone call that the call is being recorded and he has the option of asking that the recording be stopped or of terminating the conversation.

3. In 1970, the Commission adopted new broadcast rules [1] in Docket

[1] Sec. §§ 73.126, 73.296, 73.592, 73.664, 73.1206.

No. 18601, *Broadcast of Telephone Conversations*, 23 F.C.C. 2d 1 (1970). In pertinent part, these rules require that a broadcast licensee, prior to recording a telephone conversation for broadcast, shall inform any party to the call that the licensee intends to broadcast the conversation, except where the party is otherwise cognizant of that intention, or where such awareness may be imputed. Certain broadcast licensees have informally complained to us that they prefer to use recording devices to pre-record "on the air" telephone conversations as an aid in carrying out their licensee responsibilities, but that they see no need for the allegedly disruptive "beep tone" under the new rules.

4. We believe that these broadcast rules and strict adherence thereto render unnecessary the present "beep tone" requirement of the tariffs insofar as it is applicable to the recording of telephone conversations for broadcast. Thus, assuming that a broadcast licensee complies with the aforementioned rules, the parties to the telephone conversation are aware that it is the intent of the licensee to broadcast the telephone conversation over the air where it will be overheard and/or freely recorded by the listening public. Therefore it appears that there is no need to transmit a "beep tone" in these circumstances as the parties have already agreed to the loss of privacy that would otherwise be protected by the "beep tone."

5. In view of the foregoing, we believe that we should waive our 1947–48 requirement and remove the "beep tone" requirement as to those telephone conversations that are recorded for broadcast. We are informed by the Bell System that, if we take this action, the telephone companies will amend the tariffs to provide for an appropriate exception in its tariff applicable to the recording of two-way telephone conversations for broadcast purposes. Our action herein will permit the filing of such tariff revisions.

6. In taking this action for the benefit of broadcast licensees who do not like to use the "beep tone" for "over the air" conversations, we wish to make clear that we expect full adherence on the part of all broadcast licensees to our rules requiring notice of intent to broadcast recorded telephone conversations and that, if future experience indicates a need for re-imposing the "beep tone" or some other form of notice requirement, we will not hesitate to reverse or modify the action taken herein.

7. Accordingly, IT IS ORDERED, That the automatic tone warning requirements of our orders of November 26, 1947 and May 20, 1948 (12 F.C.C. 10005; and 10008) ARE HEREBY WAIVED with respect to connecting arrangements provided by the telephone companies to broadcast licensees when such connecting arrangements are used to record two-way telephone conversations broadcast over the air.

8. IT IS FURTHER ORDERED, That American Telephone and Telegraph Company is HEREBY AUTHORIZED to amend its tariff regulations in accordance with this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1104

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SAND SPRINGS CABLE TELEVISION, SAND SPRINGS, OKLA. For Certificate of Compliance	CAC-94 (OKO-64)

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 14, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On April 4, 1972, Sand Springs Cable Television filed an application for certificate of compliance for a new cable television system at Sand Springs, Oklahoma. The proposed system is to operate with 27 channel capacity and offer the following television signals:

KTEW (NBC), Tulsa, Oklahoma
KOTV (CBS), Tulsa, Oklahoma
KTUL-TV (ABC) Tulsa, Oklahoma
KOED-TV (Educ.), Tulsa, Oklahoma
KTVT (Ind.) Ft. Worth, Texas
KBMA-TV (Ind.) Kansas City, Missouri [1]

This application is opposed by Leake TV Inc., licensee of Station KTUL-TV, Tulsa, Oklahoma and Corinthian Television Corporation, licensee of Station KOTV, Tulsa, Oklahoma, and Sand Springs has replied. On August 24, 1972, Sand Springs filed an amendment to its application.

2. In its objection Leake alleges: (a) that Sand Springs is planning to carry more than two distant signals on a regular basis; (b) that this is being accomplished by proposing carriage of KBMA-TV—which does not operate full time at present—in lieu of an available station (such as KDTV, Dallas) which would not leave time open for substitutions; (c) that Sand Springs' franchise does not comply with the requirements of Section 76.31 of the Commission's Rules since: (1) it is to continue in effect until revoked; (2) the franchise fee ranges from 4% to 6% (with additional costs for furnishing free service) and yet there is no showing that (i) Sand Springs can pay it and maintain other services, or (ii) that any city regulatory program justifies the fee; (d) that Sand Springs may have overcommitted its channel capacity. In its objection, Corinthian argues (to the extent its arguments do not duplicate Leake's): (e) that (similar to (a) and (b) above), Sand Springs should not be allowed to present other signals when KBMA-TV is not broadcasting; (f) that Sand Springs has not

[1] When KBMA-TV was not on the air, Sand Springs planned to carry programs from KDTV (Ind.), Dallas, Texas, or KPLR-TV (Ind.), St. Louis, Missouri.

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alleged that its franchise was adopted after a full public proceeding affording due process; (g) that the franchise does not provide for a public proceeding before rates can be changed; (h) that the franchise makes no significant provision for investigation and resolution of complaints; (i) that the franchise makes no provision for changes made necessary by changes in this Commission's requirements; (j) that there is no construction timetable, and possibility of abuse exists in determining where significant construction will take place; (k) that there is no detailed showing of how the Commission's access standards will be satisfied; and (l) that Sand Springs has not indicated that it intends to comply with the Commission's new syndicated exclusivity rules.

3. We rule on the objections as follows: (a) (b) (e) these issues have been mooted by Sand Springs' amendment of August 24 wherein it deleted its request for certification of KBMA–TV, and instead requested certification of KDTV; (c) (1) Sand Springs states that it will accept a certificate of compliance containing a 15 year term, renewable only upon recertification by the franchising authority. We find this offer to be acceptable, and therefore proceed on the understanding that Sand Springs will voluntarily seek franchise renewal by June 25, 1986, *LVO Cable of Shreveport-Bossier City*, FCC 72–954, —— FCC 2d ——. (2) the discrepancy in the franchise fee is not so great as to bar the franchise (granted February 14, 1972) from being approved as in "substantial compliance" within the meaning of Par. 115, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 366. *See*, *CATV of Rockford*, FCC 72–1005, —— F.C.C. 2d ——; (d) this argument is entirely hypothetical since it assumes without apparent basis that Sand Springs will first direct its channel capacity to uses other than those required by our rules. As a practical matter, we do not believe it likely that Sand Springs will so quickly run through its 27 channels of capacity. And even assuming *arguendo* that it did, there is no reason to think it could not expand its channel capacity as contemplated by our rules; (f) Sand Springs supplied information to establish that the franchise was issued only after public proceeding; (g) the franchise mechanism for rate changes is that the cable operator may file a proposal which the city may disapprove after a public hearing if it wishes. This appears adequate protection for the public under the circumstances; (h) Sand Springs states that it has established and will maintain an office in Tulsa so that maintenance service will be promptly available to its subscribers. Further, the franchise (in its "Standards of Good Engineering Practice") requires Sand Springs to investigate and dispose of all customer complaints; (i) Sand Springs states that—if the Commission modifies Section 76.31 of the Rules in a manner inconsistent with its permit—it will "apply to the franchising authority so as to secure within one year of adoption of the modification or upon renewal of its permit, whichever occurs first, a modification of its permit consistent with the Section 76.31 modification." As in (c) (1), above, we find this offer to be acceptable and proceed upon the basis of this express representation; (j) Sand Springs is required by its franchise to commence construction within 30 days of receipt of all necessary authorizations, and to complete construction on or before the commencement of operation of the cable television system in Tulsa,

(authorized in *Tulsa Cable Television* FCC 72–1011). While this timetable does not formally correspond to the literal requirements of Section 76.31 (a)(2) of the Rules (which requires a "significant" amount of construction within one year of certification), it assures completion of construction in less time than required by the Commission's rules. In these circumstances, we can see no reason to object to the technical variation in terms when the net effect is completely consistent with our policies; (k) the specific objection—that there is no specially designated channel for local government uses—has been resolved by the August 24 amendment which provides for such a channel. And the more general objection—that more specific plans should be provided for access channels—seems premature at best; and (l) the Commission's rules do not require the requested assurance and no good reason is given to show that it should be sought. In summary, our review of Sand Springs' proposal persuades us that it is in substantial compliance with our rules and policies, sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection to Certification" filed May 15, 1972, by Leake TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Objection of Corinthian Television Corporation Pursuant to Section 76.17" filed May 12, 1972, IS DENIED.

IT IS FURTHER ORDERED, That Sand Springs Cable Television's application (CAC–94) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1106

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SAPULPA CABLE TELEVISION, SAPULPA, OKLA. For Certificate of Compliance	CAC-355 (OKO-74)

MEMORANDUM OPINION AND ORDER

(Adopted December 6, 1972; Released December 14, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT; COMMISSIONER H. REX LEE CONCURRING IN THE RESULT.

1. On May 5, 1972, Sapulpa Cable Television filed an application for certificate of compliance for a new cable television system at Sapulpa, Oklahoma. The proposed system was to operate with 27 channel capacity and offer the following television signals:

KTEW (NBC) Tulsa, Oklahoma
KOTV (CBS) Tulsa, Oklahoma
KTUL-TV (ABC) Tulsa, Oklahoma
KOED-TV (EDUC.) Tulsa, Oklahoma
KTVT (IND.) Fort Worth, Texas
KBMA-TV (IND.) Kansas City, Missouri [1]

This application is opposed by Corinthian Television Corporation, licensee of Station KOTV, Tulsa, Oklahoma, and Sapulpa has replied. On August 24, 1972, Sapulpa filed an Amendment to its application.

2. In its objection Corinthian alleges: (a) that Sapulpa is planning to carry more than two distant signals on a regular basis; (b) that this is being accomplished by proposing carriage of KBMA-TV—which does not operate full time at present—in lieu of an available station (such as KDTV, Dallas) which would not leave time open for substitutions; (c) that Sapulpa's franchise does not comply with the requirements of Section 76.31 of the Commission's Rules since: (1) it is to continue in effect until revoked, (2) the franchise fee ranges from 4% to 6% (with additional costs for furnishing free service) and yet there is no showing that (i) Sapulpa can pay it and maintain other services, or (ii) that any city regulatory program justifies the fee; (3) Sapulpa has not alleged that its franchise was adopted after a full public proceeding affording due process; (4) the franchise does not provide for a public proceeding before rates can be changed; (5) the franchise makes no significant provision for investigation and resolution of complaints; (6) the franchise makes no provision for changes made necessary by changes in this Commission's requirements; (7) there is no construction timetable and possibility of abuse

[1] When KBMA-TV was not on the air, Sapulpa planned to carry programs from KDTV (Ind.), Dallas, Texas, or KPLR-TV (Ind.), St. Louis, Missouri.

exists in determining where significant construction will take place; (d) that there is no detailed showing of how the Commission's access standards will be satisfied, nor has it designated a channel for local government use; and (e) that Sapulpa has not indicated that it intends to comply with the Commission's new syndicated exclusivity rules.

3. We rule on the objections as follows: (a)(b) these issues have been mooted by Sapulpa's amendment of August 24 wherein it deleted its request for certification of KBMA–TV, and instead requested certification of KDTV; (c)(1) Sapulpa states that it will accept a certificate of compliance containing a 15 year term, renewable only upon recertification by the franchising authority. We find this offer to be acceptable, and therefore proceed on the understanding that Sapulpa will voluntarily seek franchise renewal by June 25, 1986, *LVO Cable of Shreveport-Bossier City*, FCC 72–954, — FCC 2d —. (3) Sapulpa has supplied information to establish that the franchise was issued only after public proceeding; (4) the franchise mechanism for rate changes is that the cable operator may file a proposal which the city may disapprove if it wishes, after a public hearing. This appears adequate protection for the public under the circumstances; (5) Sapulpa states that it has established and will maintain an office in Tulsa so that maintenance service will be promptly available to its subscribers. Further, the franchise (in its "Standards of Good Engineering Practice") requires Sapulpa to investigate and dispose of all customer complaints; (6) Sapulpa states that—if the Commission modifies Section 76.31 of the Rules in a manner inconsistent with its permit—it will "apply to the franchising authority so as to secure within one year of adoption of the modification or upon renewal of its permit, whichever occurs first, a modification of its permit consistent with the Section 76.31 modification." As in (c)(1), above, we find this offer acceptable and proceed upon the basis of this express representation; (7) Sapulpa is required by its franchise to commence construction within 30 days of receipt of all necessary authorizations, and to complete construction on or before the commencement of operation of cable television system in Tulsa, (authorized in *Tulsa Cable Television* — FCC 2d — (1972). While this timetable does not formally correspond to the literal requirements of Section 76.31(a)(2) of the Rules which requires a "significant" amount of construction within one year of certification), it assures completion of construction in less time than required by the Commission's rules. In these circumstances, we can see no reason to object to the technical variation in terms when the net effect is completely consistent with our policies; (d) the specific objection—that there is no specially designated channel for local government uses—has been resolved by the August 24 amendment which provides for such a channel. And the more general objection—that more specific plans should be provided for access channels—seems premature at best; and (e) the Commission's rules do not require the requested assurance and no good reason is given to show that it should be sought.

4. Although we find the objections discussed in paragraph 3 above to be without merit, the subject application must be denied because the 4% to 6% franchise fee is inconsistent with Section 76.31(b) of the

Rules.[2] Sapulpa's franchise was granted on April 3, 1972 and accordingly cannot be considered under the "substantial compliance" test set forth in paragraph 115 of the Reconsideration, 36 FCC 2d 326 (1972). Nor has there been any showing of reasonableness attempted.

In view of the foregoing, the Commission finds that a grant of the subject application would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection of Corinthian Television Corporation Pursuant to Section 76.17" filed May 12, 1972, IS GRANTED to the extent indicated above and in all other respects IS DENIED.

IT IS FURTHER ORDERED, That Sapulpa Cable Television's application (CAC–355) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] Section 76.31(b) provides:
The franchise fee shall be reasonable (e.g., in the range of 3–5 percent of the franchisee's gross subscriber revenues per year from cable television operations in the community (including all forms of consideration, such as initial lump sum payments). If the franchise fee exceeds three percent of such revenues, the cable television system shall not receive Commission certification until the reasonableness of the fee is approved by the Commission on showings, by the franchisee, that it will not interfere with the effectuation of federal regulatory goals in the field of cable television, and by the franchising authority, that it is appropriate in light of the planned local regulatory program. The provisions of this paragraph shall not be effective with respect to a cable television system that was in operation prior to March 31, 1972 until the end of its current franchise period, or March 31, 1977, whichever occurs first.

F.C.C. 72-1140

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the matter of AMENDMENT OF SUBPART G OF PART I OF THE COMMISSION'S RULES RELATING TO THE SCHEDULE OF FEES	Docket No. 19658

NOTICE OF PROPOSED RULE MAKING

(Adopted December 13, 1972; Released December 27, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission is again confronted with its responsibility and obligation to comply with the mandate of the Congress that:

"* * * any work, service, * * * benefit, privilege, authority, * * * license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by [Federal Communications Commission] shall be self-sustaining to the full extent possible * * *"[1]

The Congress has authorized us to accomplish this by prescribing such fees as we shall determine, in case none exist, or redetermine in case of an existing one, to be:

"fair and equitable taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served, and any other pertinent facts * * *"[2]

3. The Commission, by its Report and Order, released July 2, 1970,[3] adopted a new and broader schedule of fees than had theretofore existed.[4] It was pointed out therein that, in adopting an earlier schedule, the Commission stated that it would undertake a continuing review of fees and that such a continuing review had since been carried forward on a regular basis which resulted in a number of changes and modifications being made; that the fee schedule adopted in 1964 established nominal filing fees and produced fee revenues which approximated 25% of the Commission's annual appropriation at that time; that subsequent changes in the schedule generally maintained the same rates between fee revenues and the Commission's appropriation; that,

[1] From Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. § 483(a)).

[2] *Ibid.*

[3] For a brief history of the activity of the Commission, the Congress and other governmental agencies pertaining to fees from 1929 to February, 1970, see *Appendix B* attached hereto.

[4] Docket No. 18802, 35 Fed. Reg. 10988, (1970), 23 FCC 2d 880. By its Memorandum Opinion and Order of April 1, 1971, in said Docket, the Commission disposed of the petitions for reconsideration and other requests and comments concerning the schedule's legality and equitableness of individual fees, 28 FCC 2d. 139.

however, after judicial affirmation [5] of the Commission's authority to establish a schedule of fees, the Bureau of the Budget has regularly urged the establishment of higher fee schedules; and that in 1969 the House Appropriations Subcommittee expressed its concern about the Commission's fee schedule, stating:

"The Committee also feels that fee charges should be further reviewed and adjusted upward with the objective of assuring that the activities of the Commission are more nearly self-sustaining * * *." [6]

It was further noted that the Conference on the Independent Office Appropriations Bill of 1970 supported the House Appropriation Subcommittee's views, stating, with respect the Commission's schedule, that:

"The Committee of Conference is agreed that the fee structure of the Commission should be adjusted to fully support all its activities so the taxpayers will not be required to bear any part of the load * * *." [7]

We further pointed out that after the commencement of the proceeding in Docket 18802 both the Senate and House Appropriations Subcommittees reiterated their view that the Commission establish its schedule of fees on a basis which would make it self-sustaining to the fullest extent possible.

4. The United States Court of Appeals for the 5th Circuit in *Clay Broadcasting* v. *United States of America and the FCC* [8] affirmed in all respects the Commission's 1970 Schedule of Fees, including annual fees payable by broadcasters and cable operators.[9]

5. The fee collections for FY 1972 amounted to $23,981,361 or 78.6% of the $30,392,100 which was the sum allocated for expenditure that year. The subsequent expansion of Commission activities and obligations, and the increases in its operating expenses and costs now necessitate a proposed increase in fees to produce revenues which will approximate our expected expenditures for FY 1974 and attain the self-sustaining objective of the fees enabling legislation and of the Bureau of Budget and Congressional Committee.

6. The anticipated FY 1974 activity cost is $42,407,406 and represents a 39.1% increase over the 1972 corresponding figure of $30,492,000. The breakdown of the 1974 sum both in terms of dollars and in terms of percentages of the total Commission cost together with expected fee revenues is as follows:

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[5] *Aeronautical Radio Inc., et al.* v. *United States and FCC,* 335 F. 2d 304 (1964) cert. denied 379 U.S. 966.

[6] H.R. Rep. No. 91–316, 91st Cong., 1st Sess., 7–8 (1969).

[7] H.R. Rep. 91–649, 91st Cong., 1st Sess. (1969).

[8] Case No. 71–1621, 71–1990, decided July 21, 1972 (Slip Op.); rehearing denied October 2,1972.

[9] The order of the Federal Power Commission assessing annual fees against gas pipeline companies and electric utilities was set aside by the U.S. Court of Appeals for the District of Columbia in *New England Power Company* v. *Federal Power Commission,* Case Nos. 71–1439, 71–1539, 71–1555 decided August 15, 1972 (Slip Op.); rehearing denied Sept. 25, 1972.

	Anticipated fiscal year 1974 costs	Percent	Anticipated fiscal year 1974 fee revenues	Percent
Broadcast	$12,287,000	29.0	$12,746,000	29.8
Common carrier	8,054,000	19.0	8,920,000	20.9
Safety and special	16,029,000	37.8	14,514,000	33.9
Cable television	3,100,000	7.3	2,713,000	6.3
Chief engineer	811,000	1.9	1,200,000	2.8
Field engineering	2,127,000	5.0	2,718,000	6.3
Total	42,408,000	100.0	42,811,000	100.0

In this Notice, the level of our anticipated fee revenue has been set at approximately the cost to the Commission of administering our programs in FY 1974. To the extent that the fee revenues are in excess of our costs, the additional amounts will serve to eliminate the necessity for frequently revising our fee schedule to keep up with our increasing appropriation structure.

7. The full impact of this fee schedule will not be felt until FY 1975 due to the "phased in" nature of the fee schedule. For example, applications which are currently on file will not be subject to the new higher grant fees. Similarly in the Cable Television area, the new annual fee will not take effect until December 31, 1973 and will not be due until April 1, 1974.

8. If our actual appropriations are not substantially equal to the estimated activity cost as contained in this notice, adjustments will be made in the finalized fee schedule to reflect our revised estimates.

9. Although we attempted to establish fees that would result in Commission activities being as nearly self-supporting as practicable, it will be noted that in the Broadcast and Common Carrier services the expected fee revenues are slightly in excess of the budget cost of administering those services and in the case of the Safety and Special Radio Service, the fee revenue is expected to be less than the estimated cost of administering that service. These variances, we believe, are justified on the basis of the comparison of the value to the recipients in the Broadcast and Common Carrier services with that in the Safety and Special Radio Service where radio communication is usually an *adjunct* to the primary business, and not *the* primary business, in which the recipient is engaged. In addition, a significant number of licensees in the Safety and Special Radio Service are local governments or others whose principal activities are to render public services and who are, therefore, not subject to the fee schedule.

10. Also, the estimated fee revenue for the Commission's activities relating to Cable Television and Cable Television Relay Services are approximately 88% of the Commission's expected budget allocation for those services. Adoption of a cable fee schedule yielding that percentage, rather than full coverage, reflects the Commission's desire to offset the unintentional inequities resulting from the cable fee schedule basically adopted in 1970 (and currently in force) under which the Commission's actual cable revenue amounted to approximately 200 percent of cable-regulation budget allocations, and its recognition that cable television, notwithstanding its bright long-run potential for service to the American people, is still in an early developmental stage dur-

however, after judicial affirmation [5] of the Commission's authority to establish a schedule of fees, the Bureau of the Budget has regularly urged the establishment of higher fee schedules: and that in 1969 the House Appropriations Subcommittee expressed its concern about the Commission's fee schedule, stating:

"The Committee also feels that fee charges should be further reviewed and adjusted upward with the objective of assuring that the activities of the Commission are more nearly self-sustaining * * *." [6]

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"The Committee of Conference is agreed that the fee structure of the Commission should be adjusted to fully support all its activities so the taxpayers will not be required to bear any part of the load * * *." [7]

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Total	42,408,000	100.0	42,811,000	100.0

In this Notice, the level of our anticipated fee revenue has been set at approximately the cost to the Commission of administering our programs in FY 1974. To the extent that the fee revenues are in excess of our costs, the additional amounts will serve to eliminate the necessity for frequently revising our fee schedule to keep up with our increasing appropriation structure.

7. The full impact of this fee schedule will not be felt until FY 1975 due to the "phased in" nature of the fee schedule. For example, applications which are currently on file will not be subject to the new higher grant fees. Similarly in the Cable Television area, the new annual fee will not take effect until December 31, 1973 and will not be due until April 1, 1974.

8. If our actual appropriations are not substantially equal to the estimated activity cost as contained in this notice, adjustments will be made in the finalized fee schedule to reflect our revised estimates.

9. Although we attempted to establish fees that would result in Commission activities being as nearly self-supporting as practicable, it will be noted that in the Broadcast and Common Carrier services the expected fee revenues are slightly in excess of the budget cost of administering those services and in the case of the Safety and Special Radio Service, the fee revenue is expected to be less than the estimated cost of administering that service. These variances, we believe, are justified on the basis of the comparison of the value to the recipients in the Broadcast and Common Carrier services with that in the Safety and Special Radio Service where radio communication is usually an *adjunct* to the primary business, and not *the* primary business, in which the recipient is engaged. In addition, a significant number of licensees in the Safety and Special Radio Service are local governments or others whose principal activities are to render public services and who are, therefore, not subject to the fee schedule.

10. Also, the estimated fee revenue for the Commission's activities relating to Cable Television and Cable Television Relay Services are approximately 88% of the Commission's expected budget allocation for those services. Adoption of a cable fee schedule yielding that percentage, rather than full coverage, reflects the Commission's desire to offset the unintentional inequities resulting from the cable fee schedule basically adopted in 1970 (and currently in force) under which the Commission's actual cable revenue amounted to approximately 200 percent of cable-regulation budget allocations, and its recognition that cable television, notwithstanding its bright long-run potential for service to the American people, is still in an early developmental stage dur-

ing which much financial investment is required but profit margins are typically either thin or non-existent.

11. As we explained in 1970 [10] the Commission's fee process starts with direct costs for each bureau/office concerned, as reflected in our annual budget requests. There is then added to such direct costs those costs of other bureaus or offices which are directly attributable to the service involved; e.g., the costs of most of the activities of the Field Engineering Bureau are distributed among Broadcasting, Common Carrier, Cable Television, and Safety and Special Services in the proportion of activity devoted to each service. This is also true of Administrative Law Judges, Opinions and Review and the Review Board. Thereafter, the Commission's remaining costs, for example, those for the General Counsel's Office, the Executive Director's Office, the Commissioners' offices and others not directly attributable to any particular service are distributed amongst the bureaus and offices, pro-rated on the basis of direct costs. As has been the case with past schedules, the other factors—"value to recipient" and "public policy and interest"—have been, and must continue to be, part of our consideration in setting new fees or modifying old ones. Accordingly, we have not deviated from that obligation in arriving at the proposals herein. Nevertheless, as with past schedules, and as noted above, the charges proposed do not necessarily reflect accurately the cost to the government of processing any particular application or the value conferred upon a recipient of an authorization or service. We reiterate that there is no requirement that individual fees be tied directly to processing costs or that individual activity costs set an outer limit for fee revenues resulting from such activity. The Court in the *Aeronautical* case,[11] in sustaining the validity of the Commission's 1963 schedule, states (at p. 310):

> "The self-sustaining principle is but one of the factors to be considered by the Commission in distributing the burden of costs, and there is no necessity that it be given the same weight in setting each class of fees * * *
>
> "We see no requirement [in 31 U.S.C. 483(a), then 5 U.S.C. 140] that 'value to the recipient' need be pecuniary value . . . the Commission may in its discretion determine what weight should be placed on each of the factors." [12]

12. The Court in the recent *Clay* case [13] confirms that conclusion, citing with approval the *Aeronautical* case and stating (Slip. Op., p. 7):

> ". . . the weighing of these statutory factors or 'whether * * * all * * * must play a quantitative share' in the judgment made, was for the Commission. [citing cases] Additionally, the Bureau of the Budget Circular A–25 which provides 'The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient' does not compel the Commission to precisely pro-rate its costs in performing the various services in the Broadcast Bureau and limit the fee for each service to its precise administrative cost. Indeed such precision would be difficult if not altogether impossible to achieve" (footnotes omitted).

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[10] The Commission's Supplemental Notice adopted and released March 4, 1970, in Docket 18802. 23 FCC 2d 183.

[11] Footnote 5 *supra*.

[12] That same court further stated (at p. 309): "To sustain their contention that the schedule does not comply with the statutory guidelines as to the cost to the government, value to the recipient and public interest served, petitioners must show us that the order assailed is unreasonable or arbitrary: we are not at liberty to interfere with the discretion of the Commission. [citing cases]"

[13] See footnote 8 *supra*.

13. In light of the above Congressional directives, the judicial decisions and our fee assessment experiences, we proposed to amend our schedule of fees as set forth in *Appendix A* hereto. Comments are invited on these proposals.

REFUND OF FEES (Section 1.1103)

14. We propose to amend Section 1.1103 to increase the minimum amount to be refunded from amounts exceeding two dollars to amounts exceeding five dollars. The increase is being recommended for two reasons: one, the number of fees which are being recommended at five dollars or less is being reduced and consequently we expect the number of refunds which would be made at five dollars or less will drop; and two, the administrative costs to the Commission and the Treasury Department to process refunds exceeds the amounts refunded.

BROADCAST SERVICES (Section 1.1111)

15. The fees required by the Commission's present fee schedule for broadcast services fall broadly into four categories: (1) filing and grant fees for construction permits for new broadcast stations or for major changes in existing stations; for television, these fees vary with the type of station (VHF, UHF) and the size of the market in which the station is located or proposed to be located; for radio, they vary with the power, hours of operation, and class of station; (2) filing and grant fees for long form applications for assignment of license or transfer of control of existing corporate licensees, the filing fee being $1,000 and the grant fee being 2% of the consideration for the assignment or transfer; (3) annual license fees, which, for radio stations, are 24 times the station's highest single "1-minute" spot announcement rate, but never less than $52, and for television stations are 12 times the station's highest "30-second" spot announcement rate, but never less than $144; and (4) a variety of other filing fees, such as those for applications for minor changes in facilities, change of call sign, assignment of license or transfer of control (short form), or applications for subscription television authorizations.

16. The rationale of the fee schedule in general and as it pertains to the broadcast services has been set forth above and will not be repeated in detail here. Suffice it to say that the broadcast fees in the present schedule and as proposed below are founded on due consideration of the factors permitted by law as discussed above—direct and indirect cost to the government, value to the recipient, and public policy or interest to be served, as well as other pertinent factors. Moreover, as stated above, the Commission has a mandate to fully support all of its activities, and revenues expected to be received under the present schedule are not sufficient to meet projected administrative costs of the Commission. Those projected costs for the Broadcast Bureau for fiscal year 1974 are $12,287,000. In fiscal year 1972, fee revenues from the broadcast services amounted to $9,688,547.

Across-the-board increase in fees

17. We believe it a legitimate exercise of the fee-setting authority to modify the fees for the broadcast services by making an across-the-

board increase of thirty percent (with exceptions noted below) in order to comply with our mandate to be self-supporting. Thus, for example, the filing fee for an application for a construction permit for a new VHF television station or for a major change in such an existing station in the top 50 markets is proposed to be increased 30%—from $5,000 to $6,500, and the grant fee is proposed to be increased 30%—from $45,000 to $58,500. Similar 30% increases are proposed for construction permits for new VHF television stations, or for major changes, in markets of other sizes; and for radio, depending on power, hours of operation, and class of station. For long form applications for assignment of license or transfer of control, we propose to increase the filing fee 30%—from $1,000 to $1,300, and the grant fee by 30%—from 2% of the consideration to 2.6%. As to the other filing fees, such as those for applications for minor change in facilities, change of call sign, or assignment of license or transfer of control (short form), 30% increases are proposed.

Fees not raised thirty per cent

18. In some cases, we do not propose to increase fees by 30%, but, rather, we propose to leave them as they presently are, or lower them, or raise them more than 30%. These situations are explained below.

(a) *Annual license fees*

19. Annual license fees for radio and television stations are proposed to be increased by a third: we propose that for radio stations such fees be 32 (instead of the present 24) times the station's highest single "1-minute" spot announcement rate, but never less than $69; and for television stations; 16 (instead of the present 12) times the station's highest "30-second" spot announcement rate, but never less than $192. The fact that the proposed increase for such fees is 33⅓% rather than 30% reflects the greater importance of the "value to recipient" factor of a going operation.

(b) *UHF; subscription television*

20. The fees that we propose to leave unchanged are those for applications for construction permits for new UHF stations or for major changes in such stations. We do this because of the marginal nature of UHF stations and the consequent lesser "value to recipient." Similarly, we propose to retain the present $1,000 filing fee for applications for authority to engage in over-the-air subscription television operations because of uncertainties as to the viability of this new service.

(c) *Application for construction permit to replace expired permit, FCC Form 321*

21. Under the present fee schedule, the filing fee for an application for a construction permit to replace either an expired permit for a new AM, FM, or TV station or an expired permit for a major change in an existing station (FCC Form 321) is $500. (The fee for an application to replace a permit for a minor change is presently $50.) Frequently, a permittee inadvertently lets its permit expire, thinking that a grant

of a modification of the permit automatically extends the date of completion of the underlying permit. Although it is the responsibility of a permittee to be aware of all facets of its operation, and it therefore should be aware of the status of its permit, nevertheless, we view the $500 fee as being in the nature of an excessively strong penalty. Because of this, because there is usually relatively little work involved in processing such applications, and because in many cases the application is for a small station unrepresented by counsel, it is proposed that the filing fee for such applications be reduced to $250.

(d) "*All Other Applications In The Broadcast Services*"

22. Section 1.1111(a) of the fee schedule specifically sets forth the fees for various categories of applications in the broadcast services. Then, as a sort of catchall, it contains the category "All Other Applications In The Broadcast Services," including AM, FM, TV, and auxiliary, and specifies that the fee for such applications is $50. Our experience in processing such applications leads us to the view that the work entailed, and consequent cost to the government, warrants an increase to $75, which is what we now propose.

(e) *Applications for modification other than a major change (except auxiliary broadcast services)*

23. The present fee for this type of application in the AM, FM, TV, and auxiliary services is $50. For the same reason that we are suggesting an increase in the "All Other Applications" category, mentioned in the preceding paragraph, we are proposing that the fee for these minor modification applications be increased to $75, except for the auxiliary services.

(f) *Modification of construction permits or licenses in the Auxiliary Broadcast Services*

24. Under the present schedule, a $50 fee is charged to file an application for a construction permit for a new broadcast auxiliary station. An application to modify that permit (or to modify a license), whether the modification is major or minor, must also be accompanied by a $50 filing fee. We believe that applications for all such modifications, because of the small amount of processing work involved, and relatively low cost to the government, should be reduced to $20, and propose that § 1.1111(a) be amended accordingly.

Legislative history

25. The Report and Order, and the Memorandum Opinion and Order, in Docket No. 18802, cited above, established the present fee schedule. In so doing, those documents contained discussions of numerous problems and questions as to fees. In administering the present fee schedule, it is necessary to refer to those discussions, which constitute an important part of the "legislative history" of the schedule. Thus, for example, the fee schedule requires payment of a grant fee consisting of 2% of the consideration in assignment and transfer cases. It is silent as to who must pay this fee. The "legislative history" pro-

vides that the assignee/transferee is liable to the Commission for payment of the fee although the parties by contract may allocate the burden between them. Again, the fee schedule provides for the payment of an annual operating fee by broadcast stations based on station rate cards of June 1 (which are to be filed with the Commission as a basis for computing the annual fee). The "legislative history", in discussing this fee, recognizes that this standard may, in some cases, be open to question, and states that any licensee claiming that the rate card in effect on June 1 is not reasonably descriptive of its yearly average may petition for the filing of a more appropriate rate card. In the foregoing and other situations, the legislative history sheds light on how the present schedule is to be administered. The proposals herein to modify the schedule retain the same basic concepts that underlie the existing schedule. Therefore, we stress that the legislative history of the present fee schedule will be used in administering the proposed schedule if it is adopted, except in cases where definite statements in the present proceeding clearly rescind statements in the history.

Exemptions

(a) *Licenses to cover construction permits in the auxiliary broadcast services*

26. Examination of Section 1.1111(b), which lists various types of applications for which fees are not required, suggests that several amendments thereto are in order. Under the fee schedule in effect prior to the present schedule, applications for licenses to cover construction permits in the auxiliary broadcast services were specifically exempted from payment of fees. In the auxiliary broadcast services, generally the application for a construction permit and the application for a license to cover the permit are filed and processed together and, after processing, they are granted simultaneously where possible. Since the applications are handled in this way, and since the exemption was omitted from the present fee schedule through inadvertence, it is proposed that Section 1.1111(b) be amended by adding applications for such licenses to those which are exempted.

(b) *Applications requesting authority to determine antenna power by direct measurement*

27. Section 1.1111(b) exempts from payment of a fee applications in the AM service requesting authority to determine antenna power by direct measurement. The processing of such applications filed by directional AM stations is very time consuming as compared to the processing of similar applications filed by non-directional AM stations. Although recognizing that cost to the Commission is only one factor in setting fees, it is proposed that the section be amended to exempt only applications of this nature that are filed by nondirectional AM stations. Those filed by directional AM stations would be assessed a filing fee of $75 under the "All Other Applications" category of Section 1.1111(a).

International Broadcasting

28. The present fee schedule contains no fee specifically applicable to the international broadcast service, except for the "All Other Applications" category. A Notice of Proposed Rule Making in Docket No. 19530, adopted June 21, 1972, and published in the Federal Register on June 30, 1972 (37 Fed. Reg. 12969), contains sweeping proposals for amendment of the rules pertaining to the international broadcast service. Among other things, it proposes to amend the fee schedule so as to provide for specific fees for stations in that service. While we shall handle the matter of fees for that service in that proceeding, we wish here to call attention to the fact that such fee proposals are outstanding.

Grant fees for assignments and transfers

29. Grant fees paid in connections with the granting of either applications for assignment of license of broadcast stations or applications for transfer of control of corporate broadcast station licensees are 2% of the consideration for the assignment or transfer. Although we believe that this is generally a good standard, various problems have arisen in administering it. Some of these problems were anticipated in the Report and Order adopting the present schedule, when we expressed our awareness of the fact that difficulties might arise. And in the Memorandum Opinion and Order which disposed of petitions for reconsideration, we acknowledged the fact that difficulties had indeed arisen and we urged parties to such transactions, where the consideration is not specified in cash, to submit to the Commission their own estimates of the dollar value of the consideration in order to assist us in determining the fee. We said, too, that because of the aforesaid difficulties, we were considering other means of determining grant fees in such case. The following paragraphs contain proposals concerning problem areas.

(a) *Allocation problems*

30. One type of difficulty, anticipated in the Report and Order in Docket No. 18802, is that in which broadcast properties are only a part of a larger transaction and the parties do not specify what part of the consideration for the entire transaction is to be allocated to the broadcast properties. A particularly difficult case of this kind was encountered in the transfer of control of Plough Broadcasting Co., Inc., to Schering-Plough Corporation. In a Memorandum Opinion and Order released July 24, 1972 (35 F.C.C. 2d 929), we resolved the allocation problem by using the statistical method of regression analysis. Essentially, this method consisted of examining twenty past assignment and transfer cases of AM and FM stations and developing a formula whereby, within a specified margin of error, one could, from the gross revenues of a station determine what consideration would be given for it if sold. Knowing the gross revenues of the five AM–FM combinations of Plough Broadcasting, the consideration that would have been given for a purchase of 100% of their stock was predicted. The grant fee for such a purchase would have been 2% of that consideration. However, since the transaction was such that the Plough shareholders only parted with (approximately) 60% of their shares

in the stations, the grant fee was 60% of 2% times the predicted consideration that would have been given for a purchase of 100% of the stock.

31. We propose to use this method in other cases involving allocation problems. Unfortunately, the method cannot be used in situations where there is not a substantial number of sales of the type in which the problem arises, for without a substantial sample, regression analysis cannot be applied. (As mentioned above, the calculation in Schering-Plough was based on 20 former AM and FM transactions.) Perhaps other statistical methods may be developed for use in cases where lack of a large enough sample precludes regression analysis. Absent any applicable statistical method for fee calculation, problem cases possibly might be solved by assessing the fee against the fair market value of the broadcast properties involved rather than against the actual or statistically predicted consideration given for the properties. Comments are also invited on whether such allocation problems might be solved by levying the proposed 2.6% fee against a rough approximation of the fair market value of the broadcast properties calculated by multiplying gross revenues of the station(s) by a specified factor, such as, *e.g.*, 2.5 times gross revenues for radio stations and 3 or 4 times gross revenues for TV stations.

(b) *Lease arrangements*

32. Assignment and transfer cases involving lease arrangements have also presented difficulties in determining the amount of consideration against which to assess the grant fee. An example of such a problem is that which arose in computing the grant fee where the assignment of license of an AM station involved a lease-option agreement concerning the physical assets with an initial lease term of 8 years for payments totalling about $1,100,000—about $140,000 per year. At the end of the 8 years the assignee had the option to purchase the physical assets for about $500,000 or lease them again for a term of 5 years at $175,000 per year. If it elected to lease, then at the end of the 5-year period it could elect to purchase for $300,000 or renew the lease for another 5 years at $100,000 per year. If it elected to lease, then at the end of the 5-year period it was required to surrender the assets to the lessor. The assignee was required to pay $300,000 at the closing of the transaction as an advance on the total amount due on the first term of the lease.

33. In such a situation, it would be possible to collect a fee on the amount to be paid under the first term of the lease, and then, at the end of that term, collect a fee on $500,000 if the option were exercised. If it were not, a fee could then be levied on the amount to be paid on the second term of the lease, and so on. Thus, the consideration could be $1,600,000 if the assignee leased for 8 years and then purchased the assets; $2,275,000 if it leased for 13 years and purchased; and $2,375,000 if it leased for 18 years and surrendered the assets. The problem is further complicated by the fact that during a lease term the assignee might assign to another party who would assume the lease payments and succeed to the rights under the option. If an option

were later exercised, problems could arise as to who would be liable for the fee covering the amount paid under the option.

34. We do not believe it is administratively desirable for computation and payment of a fee to be deferred, especially where the deferment could be for a lengthy period and the amount of the fee is subject to a variety of contingencies. In the case described above, we decided to levy the 2% fee against the total amount to be paid on the lease during the first eight years, but we are not especially satisfied with the outcome. We propose, in administering the fee schedule in the future, to apply the regression analysis method mentioned above, if a sufficient sample exists, or some other statistical method, for computation of the consideration in lease-back situations. Comments are also invited on the possibility of assessing the proposed 2.6% fee against the fair market value of the broadcast station(s) in such cases, or against the gross revenues of the stations multiplied by a factor that might give a rough approximation of the fair market value.

35. Still another approach might be taken with regard to lease-option arrangements. It is clear that in some cases they may be used by parties as a means of avoiding payment of a large grant fee. Thus, this might be the case if the lease payments are apparently far too great for the physical facilities being leased, and the option price for purchase of the facilities at the end of the lease period is very small as compared with what would appear to be a fair price for the facilities. In such a case it might appear that the assignee is actually purchasing the physical plant by means of lease payments, and that the proper way to assess a grant fee might be one of the methods discussed above. However, situations might well occur in which it is clear that the lease payments over an extended period of time are quite appropriate in terms of the physical plant being leased, and that the final option price for purchase of the plant is very close to its expected fair market value. In such a case the question arises as to whether any grant fee should be charged at all since the actual purchase of the plant appears to assume a secondary importance. Comments are invited as to whether in such cases there should be no grant fee with regard to that part of the purchase price relating to the physical plant.

36. The foregoing two situations involving allocation problems or lease-option problems are only two possible problem areas that might be encountered in administering the assignment and transfer grant fee. Since other problem areas may also arise, we further propose that in all cases the applicant shall, without a request from the Commission, have the burden of making a clear and convincing showing in its application as to how the parties arrived at the consideration and what they viewed it to be, and that absent such a showing we shall assess the fee by using a regression or other statistical method, fair market value, or a multiplier times gross revenues, as suggested above.

(c) *Additional acquisitions of stock*

37. It is of course possible for a party acquiring control of a corporate broadcast licensee to do so by purchasing *e.g.*, 60% or 100%

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of its stock in a single transaction. In such a case the grant fee is 2% of the consideration given for the stock. However, it is also possible that a party might own less than a controlling amount of voting stock, *e.g.*, 45%, in a corporate licensee and then acquire an additional amount, *e.g.*, 10%, which results in acquisition of control. In such situations, absent highly unusual circumstances, we have administered the present fee schedule by assessing the 2% grant fee against the consideration given for the 10% acquisition that resulted in transfer of control. Comments are invited on whether this method should be continued or whether the fee should be assessed against the consideration given for the total amount of stock which the transferee holds after the transaction in which it acquired control, *i.e.*, in the example above, against the consideration given for the total of 55% of the stock. Alternatively, comments are invited on whether, at the time that control is acquired, the fee should be assessed against the consideration given for the most recent acquisition that results in transfer of control and against the consideration given for all the stock acquired during a specified period of time, such as the five years immediately preceding the transaction which resulted in transfer of control.

(d) *Short form vs. long form applications*

38. The aforementioned problem of how to assess a grant fee in cases where a party already owning a non-controlling amount of stock in a corporate licensee gains control through the acquisition of additional shares raises still another question. Under the present fee schedule, applications for assignment or transfer which are filed on the short form (FCC Form 316) are assessed a $250 filing fee, but no grant fee; grant fees are levied only on applications filed on the long form (FCC Form 314 or 315). Section 1.540 of the rules lists situations in which the short form is to be used. One of the situations, set forth in paragraph (b) (3) of the section, is the following:

> **Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one.**

By long administrative construction of this rule, when less than 50% of the stock of a corporate licensee is transferred to a party, and when the newly acquired stock added to stock of the corporation previously held by the party totals 50% (negative control) or more (positive control), and when the party has been previously passed on by the Commission with respect to the station involved, the short form is used. However, if the acquiring party has not been previously passed on by the Commission, the long form is used. Comments are invited on whether, when a short form is used in such situations, a grant fee should be charged, and, if so, whether it should be assessed only against the consideration given for the most recent acquisition of stock that resulted in gaining control, against the consideration given for all of the stock held after the transfer of control regardless of when the stock was acquired, or against the consideration given for the most recent acquisition and the consideration given for the stock acquired during a specified period of time prior to the transfer of control, such as five years immediately preceding the transaction which resulted in transfer of control. It should be noted that we are not here proposing to assess

a grant fee against all applications filed on the Form 316, but only against those of the type described above.

(e) *Gifts*

39. Under the present fee schedule, we are of the view that no grant fee should be assessed on any assignment or transfer by will, intestacy, or inter vivos gift because in such cases there is no monetary consideration as contemplated by the Report and Order in Docket No. 18802 which adopted that schedule. We question, however, whether all such situations should be free from payment of a grant fee, and we propose that only assignments and transfers (inter vivos, or by will or intestacy) to members of the donor's family should be free from such fees. Thus gifts to anyone else, whether to tax exempt organizations for the operation of stations providing noncommercial educational broadcast services, or otherwise, would be subject to the fee. This proposal raises two questions, (1) how should a family member be defined, and (2) in cases of gifts to nonfamily members, how should the grant fee be calculated? Comments are invited on whether family relationship should be delimited as in various sections of the Internal Revenue Code, such as Sections 267 (a), (b), and (c) which disallow losses from sales or exchanges of property between members of a family. The family of an individual is defined in those sections as including only his brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants. 26 U.S.C. 267 (1964). We also invite comments on whether a more restrictive family relationship should be used, e.g., spouse only. As to the matter of calculation of the grant fee in cases of gifts to nonfamily members, we invite comments on the use of regression analysis or other statistical methods for ascertaining a predicted consideration for the subject broadcast facilities against which the 2.6% fee would be levied. Comments are invited, too, on assessment of the fee against the fair market value of the station(s), or against the gross revenues multiplied by a factor that might give a rough approximation of the fair market value. Finally, we invite views concerning whether a filing fee should be charged for applications that involve gifts to family members.

(f) *Liabilities*

40. Comments are also invited on another problem that has been encountered in administering the fee schedule, a problem having to do with liabilities of a closely held corporate licensee the control of which is being transferred. It is clear that if an assignee or transferee assumes liabilities of an assignor or transferor, the liabilities constitute part of the consideration in the transaction. The problem that we have met is that in which the liabilities of a transferor of a closely held corporate licensee are not assumed by the transferee. If, for example, in a single transaction a transferee acquires 100% of the stock of a closely held corporate licensee but does not assume its liabilities, the transferee owns the corporation and the liabilities continue as those of the corporation.

41. Comments are invited on whether, for purposes of calculating the grant fee, the consideration should include the consideration given for the stock plus the amount of the liabilities in such situations. The underlying theory of such an approach is that the negotiations for the stock would take into account the amount of the liabilities of the corporation. The greater the liabilities, the less the amount of the cash that would be paid, and vice versa, and the total of the consideration given for the stock plus the amount of the liabilities would be about the same regardless of the consideration given for the stock.

42. Additionally, comments are invited on how to treat situations where a transferee acquires control of a closely held corporate licensee, having liabilities, by the purchase of less than 100% of its stock. Thus, if instead of 100% of the stock, a transferee in a single transaction were to acquire a controlling interest such as 51%, should the consideration be computed by adding the consideration given for the stock to 51% of the amount of the liabilities? To 100% of the liabilities? If a party owns 45% of the stock of such a corporation and acquires an additional 10%, should the consideration be viewed as that given for the stock plus 10% of the liabilities? Or that given for the stock plus 55% of the liabilities? Or that given for the stock plus 100% of the liabilities?

43. Parties are requested to submit their views on whether the liabilities to be considered in the foregoing types of cases should include current liabilities only, or all liabilities of the corporation, and whether relief from secondary liabilities such as substitution of a transferee for a transferor as guarantor, endorser, surety, etc., on any obligation should also be included.

COMMON CARRIER (Section 1.1113)

44. The estimated FY–1974 budget requirement for the Common Carrier Bureau is $8,054,000 or practically double the amount actually collected for FY 1972 for the Bureau. We therefore, with the specific exceptions noted below, and in the absence of any indication of significant inequities among common carrier services or carriers and for ease of administration, propose to double the current application filing and grant fees which should substantially meet the Commission's revenue requirements, including those to be imposed in 1975.

45. With respect to the exceptions, the present schedule covering the Domestic Public Land Radio Service prescribes filing fees for individual mobile units of $50 for the first unit per application and $30 for each additional unit. These fees are substantially higher than the fees charged in the Industrial Service for comparable facilities, where there is only a $20 fee for the first unit and no fees for additional units requested in a single application. Although this notice proposes a filing fee for each additional transmitter unit in the Safety and Special Radio Services, we believe that any increase in the common carrier schedule for individual mobile units would continue an undesirable differential. Consequently, no charge from the present fee levels is proposed. We are however, as an addition to the DPLRS schedule, proposing initial grant and renewal fees for individual mobile units included under base station authorizations.

46. Under the current schedule, the grant or renewal of a base station authorization includes authority for individual mobile units and, if any, dispatch stations and standby transmitters associated with the base station. Applications for modification of base station authorizations to increase the number of mobile units have also been subject only to the prescribed base station modification fees. This approach is inconsistent with all other common carrier services where a fee is applicable to each separate transmitter. Moreover, in the mobile service itself the present schedule prescribes that applications for license or renewal of license for individual mobile stations (Item 6) shall apply on a per mobile unit basis. Consequently, we propose a separate grant fee ($20 for initial grant and $10 for renewal) for each mobile unit, dispatch station or standby transmitter covered by a base station authorization in addition to the filing and grant fees applicable to the base station itself. We also propose a $10 renewal fee for each one-way signaling receiver served through a base station at time of renewal of the base station.

47. We also propose, while doubling the filing fee, to retain without increase the current grant fee in the mobile service for "other than initial construction permit, modification of construction permit or license for base station, dispatch station, auxiliary test station, control station or repeater station at an existing station location". This we do to be consistent with the grant fee prescribed for similar applications in the point-to-point microwave service. Under the proposed schedule the grant fee in each case would be $50. The fee levels proposed for the new Multipoint Distribution Service supersede the schedule of fees proposed in the Notice of Proposed Rule Making in Docket No. 19493. (34 FCC 2nd 719.)

48. We are also proposing minor adjustments in certain fees in the Rural Radio Service and Local Television Service, none of which will have an appreciable effect on fee revenue. We have found that the third sentence in that Service's present schedule reading: "Application for license or modification of license for individual subscriber stations" does not describe with sufficient precision the types of authorization affecting rural subscriber facilities. We therefore propose to delete that sentence and replace it with separate sentences for applications for initial construction permits and modification of construction permits or licenses respectively. We have thus proposed equating these applications with the corresponding types of applications for dispatch stations in the Domestic Land Mobile Radio Service.

49. With respect to the Local Television Transmission Service, an adjustment in the grant fee for applications for "other modification of construction permit or modification of license" is being made to conform to the treatment of similar applications in the point-to-point microwave service. Modification applications in both services are comparable in nature and processing considerations. The proposed grant fee is $50. Also, we feel that the grant fee for renewal of licenses in this service should be made equal to the fee proposed for renewals in the point-to-point microwave service.

50. In the Satellite Communication Services section of the schedule, we propose to delete all fee requirements for applications for initial construction permit or for renewal of license for an earth station to

be used solely for developmental or non-commercial purposes. This is consistent with the treatment of non-commercial stations in the broadcast service.

51. The Common Carrier Non-Radio Applications current schedule, provides for a filing fee and a grant fee for applications filed by telegraph companies to discontinue, reduce or impair services to the public. Part 63 of the Commission's Rules permits such companies to file blanket applications for reduction in hours of service at main and branch offices under certain specified standards and conditions, in which an unlimited number of offices may be included in a single application. These monthly "blanket" applications include requests covering an average of from 25 to 30 telegraph offices, although occasionally the number runs as high as 50 or more for which authority to reduce hours is requested. Each proposal must be scrutinized individually by the staff and substantial benefits accrue to the carrier from a grant of its request. In the interest of consistency we have proposed the addition of a footnote (No. 11) to Section 1.1113 of the schedule specifying that the grant fee shall apply to each individual reduction-in-hours request granted in a blanket application.

52. Appendix A of Part 64 of the Commission's Rules contains instructions relative to the proper order of restoration of leased intercity private line service if such service is interrupted during emergencies, and establishes procedures whereby private line customers may apply for restoration priority assignments. We propose a $10 filing fee for each such application and a $20 grant fee for each circuit certified for priority assignment. Also in the common carrier nonradio section of the schedule, footnote 10 has been amended to state the equivalency factor between analog and digital channel spectrum use which will be used in determining grant fees, when appropriate.

(SAFETY AND SPECIAL RADIO SERVICES) (Section 1.1115)

53. In the Safety and Special Radio Services, the fee schedule will be revised in the following significant respects. First the basic fee now charged will be increased. Second, in determining the fee to be charged each applicant, we will take into account the number of transmitter units to be authorized, and finally, in the Aviation and Marine Service, we will charge a different fee if the radio is to be used for business purposes. Our goal is to devise a fee schedule which will result not only in receipts approximating our expenses in regulating the services but which is also equitable and administratively practical (roughly $14.5 million, or approximately 33.9% of the anticipated 1974 fiscal year Commission activity cost).

54. Accordingly, in Industrial, Public Safety, Land Transportation, Marine and Aviation Services (where fees are not chargeable), the basic filing fee will be increased from $20 to $40. In addition, for any applicant proposing, on one application, more than one transmitter (e.g., 1 base station and 5 mobile units or 2 base stations) an additional amount of $5 will also be charged for each transmitting unit more than one. Thus, for example, an applicant proposing a base and 5 mobile units in one of the Industrial Services will be

charged a fee of $65, one proposing 2 base stations and no mobile units in the same application will be charged $45. An applicant proposing a mobile relay system, which involves the filing of three applications will be charged $40 for the control station, $40 for the mobile relay station, and $40 for the mobile station assuming a single mobile unit is to be used. If 5 mobile units are proposed, the fee for the mobile application will be $60 ($40 plus $20 for the 4 additional mobile units).

55. For microwave station applications, those proposing frequencies above 952 MHz, we propose to increase the basic fee to $100 for an authorization with one transmitter and charge an additional fee of $25 for any additional transmitting units applied for in the same application.

56. We propose to provide a distinction between the commercial and non-commercial users of radio by retaining the present $20 fee for ship and aircraft station applications ($25 when interim authority for ships is requested) when the radio is to be used only for recreational or pleasure, i.e., non-business purposes and raising the fee to $40 ($50 for interim authority) in other cases. While we are mindful of the fact that because of frequent resales of recreational aircraft and/or boats, a large percentage of them are sometimes operated without a radio or with an unlicensed radio, our policy is to foster the use of radio on ships and aircraft to the maximum extent possible for purposes of establishing an effective maritime and aeronautical safety system. We are apprehensive that raising, at this time, the application fee for recreational or pleasure craft might hinder us in reaching that goal.

57. In establishing this distinction, and not extending it, generally to other than the cases of recreational boats and aircraft, we are aware that there are instances where the licensees of stations in other services, such as the Business Radio Service, may be using radio for purposes other than a commercial enterprise and that the distinction could, therefore, be applied to such other services. Our licensing records, however, indicate that non-commercial radio users in the other services, with the exception, perhaps, of the Class D Citizens Service, are rare and that to provide special processing procedures for these applicants would be unreasonably burdensome and of questionable value. In the Class D Citizens Service we propose no distinction among users of the Service because we believe, with the present misuse of the Service, and resultant enforcement problems which we are trying to solve, the value to the recipient of the Class D service is much less than in other more commercially oriented services such as the Land Transportation, Industrial or Class A Citizens Service. We recognize, too, that the fair and effective implementation of this proposal may be administratively troublesome at times in that there will be difficult cases when an applicant, or the staff, may not always be able to correctly determine for filing fee purposes, whether an applied-for station is to be used for business or non-business purposes. We believe that in the interests of equity, however, an effort should be made to distinguish between these two classes of radio users, and we can modify our application forms to include an appropriate question to help us determine whether a proposed station is for business or non-business uses.

58. In an earlier Notice of Proposed Rule Making,[14] we stated that the large number of applications filed in the Safety and Special Radio Services, together with the minimal percentage of denials of such applications, militated against the general establishment of separate application filing fees and grant fees because of the substantial paper work involved. We recognize, however, that when an applicant desires to operate large numbers of mobile units, or additional stations under aircraft fleet or ship plurality licenses and pays filing fees for the additional transmitting units many times the basic application filing fee, an unreasonable financial hardship results when the application is not granted and none of the fee is refunded. Despite the large volume of applications that will result from the new fee arrangement, we believe some relief must now be provided to applicants whose applications are not granted, therefore, we propose to permit refunds in these cases of all the filing fees except the specified basic filing fee, as shown in the attached appendix.

59. In the case of the Citizens Class D Service we propose to increase the fee to $25 for a license with an authorization to operate up to five transmitters: plus $1 for each transmitter over five. Essentially, this constitutes no increase in the basic filing fee, which is now $20, but represents a new fee of $1 per transmitter, or mobile unit, as contrasted with the $5 per transmitter fee in other services. We believe the smaller fee is warranted in the Citizens service, because of the existing user problems that render the service less valuable to the Class D Citizens radio licensee, as explained above.

60. We are proposing a $1 increase to the schedule of fees for licenses in the Amateur Radio Service. We consider this a modest increase and we do not anticipate a significant decrease in the number of amateur radio operators as a result. We do not believe a greater fee increase to be advisable in that it could prove to be a hardship for some applicants. On the other hand, it would not be equitable for licensees in this Service to completely avoid some share in meeting the increased costs of the Commission operation generally, and in administering the Amateur Radio Service specifically. Also considered, but not proposed, was the establishment of a nominal fee for applications for the Novice Class license, which has not been required in the past. We determined a fee of more than $5 would be excessive for this 2-year beginner license, in comparison to the other 5-year licenses. Yet a lesser fee might cost more to collect and account for than the added revenue derived.

61. For applications for modifications of authorizations the filing fee proposed will be the same as the basic filing fee. If additional transmitting units or stations are requested, the fee will be related to the number of units to be added to the license, as modified during its term. If an applicant desires a full term renewal of a station authorization, with a modification at that time to increase the transmitting units, a fee based on the total units would be required.

62. We propose to continue to exempt from the fee requirement applications and licenses in the emergency services such as fire and police, for state and local government entities and certain other appli-

[14] Paragraph 11, Notice of Proposed Rule Making in Docket No. 18802, 35 Fed. Reg. 3815 (1970) 21 F.C.C. 2d 502.

cants as now specified in the rules. Therefore, subparagraph (c) of the current Section 1.1115 will not be changed.

63. We have not proposed an increase in the fees for Class III (VHF) Public Coast station applications because this is a developing service that is not yet economically viable in many instances and we are interested in the expansion and better establishment of the service for maritime safety system reasons and in improving public correspondence radiocommunication facilities. We believe that a fee increase in this service at this time may be a deterrent to the improvement of the service by imposing an economic hardship on licensees whose operations may be economically marginal.

CABLE TELEVISION SERVICES (Section 1.1116)

64. The proposed schedule includes in the Cable Television Relay (CAR) Service a $15 fee for reinstatement of an expired construction permit or license and a $25 fee for assignment of a construction permit or license or transfer of control of a corporate permittee or licensee. While not included in the schedule currently in effect, they were inadvertently omitted therefrom when it was initially published. Such fees were actually in existence in the Business Radio schedule and were paid by CAR licensees and permittees prior to the proceeding in Docket No. 18802.

65. We are proposing an increase in the cable television annual fee from 30 to 40 cents per subscriber, a 33⅓% increase. In addition, we have proposed an approximately 50% increase in the filing fees for certificate-of-compliance applications.[15] We believe that the burden of paying for the operational cost of the Cable Television Bureau is more equitably placed upon the annual fee than upon a more substantial increase in the fee for certificates of compliance. The per-subscriber annual fee more accurately reflects the ultimate benefit to the certificate applicant of the Commission's application processing services.[16] Loading the major cost of certificate application processing upon the prospective cable operator rather than recouping it later with annual fees would be very burdensome on small operators in view of the initial outlay required such as the cost of local franchise acquisition, the fact that a separate certificate application must be processed for each community proposed to be served, and the fact that the initial

[15] The fees now in effect ($35 for certificate applications and $10 for each additional system under same ownership and using same headend but serving or proposing to serve an additional community) were adopted by the Commission on February 2, 1972 as part of the Cable Television Report and Order in Docket Nos. 18397 *et al.* and have only been in effect since March 31, 1972 when they superseded an earlier fee of $10 per "notification pursuant to 74.1105".

[16] To be sure, not all cable systems now in existence and subject to the annual fee have as yet filed applications for certificates of compliance. But substantially all of them will have to within the near future. Section 76.11 of the new cable rules provides, in pertinent part, that "(a) No cable television system shall commence operations or [even] add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission. (b) No cable television system lawfully carrying television broadcast signals in a community prior to March 31, 1972, shall continue carriage of such signals beyond the end of its current franchise period, or March 31, 1977, whichever occurs first, unless it receives a certificate of compliance." Thus, annual fee payment by an existing system which has not yet filed an application for a certificate of compliance may reasonably be justified in part as (i) partial prepayment for a deferred service (processing of application for a certificate of compliance) substantially certain to be required by the operator within the near future, and (ii) payment for a current benefit (authorization to operate within the scope of the Federal cable television regulatory program), both calculated in terms of benefit to the recipient.

construction costs for cable television transmission to various parts of the community and to particular subscribers within them are very high per TV home; far higher, for example, than the construction costs for over-the-air television transmission facilities.

FIELD ENGINEERING BUREAU COMMERCIAL OPERATOR APPLICATIONS
(Section 1.1117)

66. The fee schedule proposed for applications filed and processed for commercial radio operator licenses and permits and certain related services contains certain reductions and increases necessitated as in other areas and has been simplified. The present fee schedule is based on the class or type of the license document requested. The fees imposed upon applications for a new or renewed third, second or first class authorization are $3.00, $4.00, and $5.00 respectively. It must be emphasized that the applications for these three classes of operator authorizations require identical processing procedures and that the examination portion of an application for a new third class permit may involve the same amount of work by the staff as the first class license application. It is therefore proposed that a single $10.00 fee be established for applications for new and renewed commercial operator authorizations of all classes.

67. The fee for replacement or duplicate of an existing permit is being reduced to $2.00 since these issuances do not grant any new or extended operator privileges to the recipient. In most cases, the duplicate or replacement of the original permit is requested because of circumstances beyond the control of the applicant.

68. Section 13.71(a) of the Commission's Rules provides that an operator whose permit or license has been lost, mutilated or destroyed "shall" immediately notify the Commission and file an application for replacement. Section 13.71(b), however, provides that in the case of a name change the holder "may" make an application for replacement. We now propose to eliminate the fee for replacement of a license or permit if the reason for the requested replacement is a name change only. We also propose to amend Section 13.71(b) to make it mandatory to notify the Commission of name changes in order that the Commission's records will reflect the correct names of its licensees and permittees. We believe that charging a fee in such cases is perhaps discriminatory against female operators and also may have militated against the voluntary filing of applications which presently the rule does not require. Notification to the Commission is the important requirement in such cases. Permittees or licensees may still request permit or license replacements to show new names but no fee will be charged therefor. Applicants for replacements for other than name change reasons will continue to be charged fees therefor.

69. We propose a separate $2.00 fee for each endorsement an applicant requests to be placed on a new renewed license or permit. These endorsements confer additional special operator privileges or authority and are usually obtained by passing an additional examination element or completing a specified period of operating experience and submitting documentation thereof. Under the current fee schedule

a separate endorsement fee is required only for those applications submitted separately from new or renewal applications.

70. Restricted Radiotelephone Operator Permits (RP) are issued to United States citizens without written examinations, normally valid for the lifetime of the permittee. The records on these grants must be maintained in the Commission's files for an indefinite period. A special version of these permits is also issued for a one-year term to aliens who hold United States aircraft pilot licenses. The present fee for these restricted permits is $8.00 for applications from U.S. citizens and $2.00 for applications from aliens. Experience in administering the issuance of these permits has shown that applications from aliens require as much or a greater amount of clerical work than do permits issued to U.S. citizens. For this reason, a uniform $10.00 fee is proposed for all Restricted Radiotelephone Operator Permit applications.

71. No changes in the fee schedule are proposed for applications filed for verification cards or posting statements. However, the schedule will clarify the $2.00 fee is required for each posting statement requested. (A verification card is a wallet size certificate attesting to the existence of a valid license document and used during the operation of certain types of radio stations. It is more easily carried than a full size license. A posting statement is a document that may be posted in lieu of the original license certificate by a person who is employed at more than one transmitting station where his operating authority must be on display.)

EQUIPMENT TESTING AND APPROVAL (Section 1.1120)

72. For the Commission's type approval program, administered by its laboratory, it is proposed that the preponderance of the proposed fees as increased be imposed on the filing rather than on the grant as is currently the case. This is preferable and justifiable because nearly the total test and evaluation effort must be and is accomplished regardless of whether approval is granted or not. There were approximately 145 items type-approved in 1972 with a fee revenue of only about $49,000. The personnel costs alone for type approval tests in that year totalled $107,510 which did not include cost of Commission equipment, facilities and other support efforts. The cost of operating the laboratory is approximately $200,000 annually (excluding allowances for special projects, development work, etc.) and therefore the projected fee recovery in this area, which is approximately $240,000, is not unreasonable.

73. With respect to the certification and type acceptance programs administered by the Technical Division of the Office of Chief Engineer, the fees continue to reflect the total relative processing effort involved, modified by experience. The amounts, however, do not reflect the degree of processing efforts involved for each type of action. Instead it can be said that the fees are somewhat more reflective of the "value to the recipient" factor. Because the generally higher production items (i.e., television and AM/FM broadcast receivers, etc.) are certified by the Technical Division, the preponderant share of funds

to be recovered by the Office of Chief Engineer will be recovered through that schedule.[37]

74. Although not included herein as a proposal, the Commission in this connection is considering the advisability of proposing at a future time a fee schedule which would more nearly reflect the "value to recipient" component of the fee standards with respect to type acceptance, type approval and certification actions. It is believed that a schedule should be developed which takes into consideration the quantity produced and/or marketed of a particular generic type of equipment distributed for sale pursuant to one of the authorizations mentioned above. The types of equipment being considered under such a plan would include such things as receivers in the broadcast service, microwave ovens, and land mobile equipment. The per unit fee would be very nominal and thus would not constitute any significant burden on consumers.

75. While we recognize the reluctance of manufacturers to divulge production and sales figures, we also recognize the need for a schedule which would more realistically reflect the value to the grant recipients and believe that its adoption would permit future equitable modifications in other areas of the fee schedule. Accordingly, comments directed toward the efficacy of and methodology for such a schedule, the problems associated with collection, administration and dependability of reported data, etc., are specifically requested. Additionally, we are interested in the magnitude and scope of the effect such a schedule would have on manufacturers' distribution networks and ultimately on the consumer from the standpoint of recuperation of administrative costs. Some may challenge our authority in this area; therefore, comments or legal briefs on the subject would be most welcome.

APPLICABILITY OF NEW SCHEDULE

76. The proposed new schedule, if adopted, will apply to all filings and grants made after the effective date of the adoption, provided, however, that applications filed on or prior to the date that this Notice of Proposed Rule Making is published in the Federal Register, but granted after the effective date of the adopted new schedule, will be subject to the old schedule of fees.

77. With regard to the date of filing of applications referred to above, it is noted that pursuant to the Commission's rules and practices, the filing date of a document is considered to be the date it is actually received at the offices of the Commission and not the date of the postmark on the envelope.

PRORATING OF ANNUAL FEES

78. As in the present fee schedule, the proposed new schedule provides that annual fees for broadcast stations will be payable on the anniversary date of the expiration of the license, and annual fees for

[37] Attention is also invited to the Notice of Proposed Rule Making in Docket No. 19642 released November 29, 1972, wherein the simultaneous submission of filing and grant fees for type acceptance and certification actions is proposed. Rule making accomplished in that proceeding will be incorporated in whatever final action may be adopted in the subject rule making.

cable operations will be payable on April 1. In the case of broadcast stations, the fee covers station operation for the year preceding the due date. For cable systems, it covers operation for the previous calendar year. During the first year of any new schedule that may be adopted, we propose that the annual operating fees for broadcast stations be prorated. That portion of the year's operation preceding the effective date of the new schedule will be paid for at the old rate, and that portion following the effective date will be paid for at the new rate. Similarly, for cable television systems, that portion of the preceding calendar year's operation that preceded the effective date of the new schedule will be paid for at the old rate, and the rest at the new rate.

79. It is contemplated that under the new fee schedule the party who is the licensee of a broadcast station or the owner of a cable system on the date the annual fee falls due (the anniversary date of expiration of license for broadcast station licensees, and April 1 for cable television system owners) will be liable for the entire fee regardless of whether that party was the licensee or owner for the entire year which the fee covers.

80. While it is not reflected in the attached Fee Schedule, the Commission is currently considering the elimination of Operator Examination Fees. We are inviting comments on the proposal to eliminate operator responsibility for such fees and to "spread" the operator examination program costs over the activities which benefit therefrom.

81. The Commission is presently studying the feasibility of transferring its operator examination program to the Civil Service Commission in order to improve the service to the public. By the use of the facilities of the Civil Service Commission the number of points at which examinations can be given would be increased from the present 89 locations to over 1000. To take advantage of this opportunity, it may be necessary to eliminate fee collections from operators and shift the cost of the program to the industries that benefit by the use of qualified operators. This would necessitate a minor increase in the proposed Fee Schedule.

82. Authority for the adoption of the amendments herein proposed is contained in Section 4(i) (47 U.S.C. 154(i)) of the Communications Act, Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)) and Budget Bureau Circular A–25 and supplements thereto.

83. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before February 13, 1973, and reply comments on or before February 28, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision on the rules of general applicability which are proposed herein, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

84. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, pleadings, briefs, or other documents shall be furnished the Commission.

85. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street NW.).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX A

It is proposed that Subpart G, Part I of Chapter I, Title 47 of the Code of Federal Regulations, Sections 1.1103, 1.1111, 1.1113, 1.1115, 1.1116, 1.1117 and 1.1120 be amended.

1. It is proposed that Section 1.1103 paragraph (b) be deleted and that a new paragraph (b) and a paragraph (d) be added as follows:

§ 1.1103 Return or Refund of Fees

* * * * * * *

(b) In the case of applications filed in the Safety and Special Radio Services, if the full amount of any fee submitted is not refunded pursuant to paragraph (a) above and the application is not granted, the portion of the filing fee that represents a fee for additional transmitting units or stations will be refunded or returned.

(c) [This subparagraph is the subject of a separate Notice of Proposed Rule Making in Docket No. 19642, released November 29, 1972.]

(d) Payments in excess of an applicable fee will be refunded only if the overpayment exceeds $5.

3. It is proposed that Section 1.1111 be amended to read as follows:

§ 1.1111 Schedule of fees for Radio Broadcast Services.

(a) Except as provided in paragraph (b) of this section, the fees prescribed below are applicable to applications and operations in the Radio Broadcast Services:

Construction Permits

Application for construction permit for new station or for major changes in existing station:

	Filing fee	Grant fee
VHF—Top 50 markets [1]	$6,500	$58,500
UHF—Top 50 markets	2,500	22,500
VHF—Next 50 markets	2,600	23,400
UHF—Next 50 markets	1,000	9,000
VHF—Balance	1,300	11,700
UHF—Balance	500	4,500
FM—Class A	130	1,170
FM—Class B and C	260	2,340
AM—Day—50 k.w	650	5,850
AM—Day—25 k.w	520	4,680
AM—Day—10 k.w	390	3,510
AM—Day—5 k.w	260	2,340
AM—Day—1 k.w	130	1,170
AM—Day—500 w	65	585
AM—Day—250	35	300
AM—Unlimited 50 k.w	1,300	11,700
AM—Unlimited 25 k.w	1,040	9,360
AM—Unlimited 10 k.w	780	7,020
AM—Unlimited 5 k.w	520	4,680
AM—Unlimited 1 k.w	260	2,340
AM—Unlimited 500 w	130	1,170
AM—Unlimited 250 w	65	585
AM—Class IV	130	1,170

[1] The market size shall be determined by the ranking of the American Research Bureau, on the basis of prime time households (average quarter-hour audience during prime time, all home stations).

Other Applications

The following fees shall accompany each application:

	AM	FM	TV	Auxiliary [2]
Applications filed on FCC Form 316 (where more than one broadcast station license is involved, the application must be accompanied by the total amount of the fees prescribed for each license so involved)	$325	$325	$325	No fee
Application for construction permit to replace expired permit, FCC Form 321 [3]	250	250	250	$50
Application for modification other than a major change (except Auxiliary Broadcast Services)	75	75	75	
Application for a modification of construction permit or license in the Auxiliary Broadcast Services				20
Application for change of call sign for broadcast station	130	130	130	
All other applications in the broadcast services	75	75	75	75

[2] With respect to applications for remote pickup broadcast stations authorized under Subpart D of Part 74 of this chapter, one fee will cover the base station (if any) and all the remote pickup mobile stations of a main station, provided the applications therefor are filed at the same time.

[3] The $250 fee applies to construction perimts for new stations or major change in existing stations. An application to replace a construction permit for a modification other than a major change must be accompanied by a fee of $75 in all services.

Subscription Television

Application for Subscription Television Authorizations:

Application Filing Fee $1,000

Assignment and Transfers

Application for assignment of license or transfer of control, exclusive of FCC Form 316 applications (where more than one broadcast station license is involved the total amount of fees prescribed for each license so involved will be paid in the manner set forth below):

Application Filing Fee $1,300

Assignment and Transfer fee to be paid immediately following consummation of the assignment or transfer (percent of consideration for assignment or transfer) 2.6

Annual License Fees

Each broadcast station shall pay an annual license fee to the Commission that is based on the station's rate card as of June 1 of each year.[4]

For AM and FM radio stations:

The annual fee will be a payment equal to 32 times the station's highest single "one-minute" spot announcement rate, but in no event shall the annual payment for each AM and each FM station be less than $69.00;

For television broadcast stations:

The annual fee will be a payment equal to 16 times the station's highest "30-second" spot announcement rate, but in no event shall the annual payment be less than $192.00.

(b) Fees are not required in the following instances:

(1) Applications filed by tax exempt organizations for the operation of stations providing noncommercial educational broadcast services, whether or not

[4] In the first year of the fee schedule, a station's fee will be computed by taking the number of months from the effective date to the payment date divided by 12 times the full year annual fee which is required by this schedule, and adding to that the fee computed by taking the number of months from the last payment date to the effective date of this schedule divided by 12 times the full year annual fee required by the old fee schedule. Stations beginning operation, pursuant to program test authority, after the license expiration anniversary date are liable for a pro-rata amount of the annual fee equal to the number of full months in operation from the date of program test authority to the payment date for the short period.

such stations operate on frequencies allocated for noncommercial educational use.

(2) Applications in the standard broadcast service requesting authority to determine operating power of non-directional standard broadcast stations by direct measurement.

(3) All FM or television translator applications and all television translator relay stations.

(4) Applications by local government entities in connection with the licensing or operation of a noncommercial broadcast station.

(5) Applications for licenses to cover construction permits in the auxiliary broadcast services.

4. It is proposed that Section 1.1113 be amended to read as follows:

§ 1.1113 Schedule of fees for Common Carrier Services. Applications filed for common carrier services shall be accompanied by the fees prescribed below.

	Filing fee	Grant fee
DOMESTIC PUBLIC LAND MOBILE RADIO SERVICES [1]		
Application for initial construction permit or for relocation of a base station, including authority for mobile units, blanket dispatch station authority,[2] and standby transmitters without independent radiating systems.[3 4]	$200	$300.
If above includes authority for mobile units, blanket dispatch station authority or standby transmitters without independent radiating system, add per mobile unit, dispatch station or standby transmitter.	.....	$20.
Application for initial construction permit or for relocation of a dispatch station,[5] auxiliary test station, control station or repeater station.[4]	100	$150.
Application for other than initial construction permit, modification of construction permit or license for base station, dispatch station, auxiliary test station, control station or repeater station at an existing station location.	50	$50.
Application to increase number of mobile units blanket dispatch stations or standby transmitters without independent radiating systems per unit or transmitter.	.....	$20.
Application for renewal of base station	50	$250.
If above provides one-way signaling or includes renewal authority for mobile units, blanket dispatch stations or standby transmitters without independent radiating systems, add per one-way signaling receiver served, mobile unit, dispatch station or standby transmitter.	.....	$10.
Application for renewal of license for dispatch station, auxiliary test station, control station or repeater station.	20	$100.
Application for license, modification of license or renewal of license for individual mobile stations		
One mobile unit per application	50	
Each additional mobile unit per application	30	
MULTIPOINT DISTRIBUTION SERVICE		
Application for initial construction permit or for modification involving relocation of station or addition or change of frequencies.	200	$300.
Application for other modification of construction permit or license	50	$50.
Application for renewal of license	50	$200.
RURAL RADIO SERVICE		
Application for an initial construction permit or for relocation of central office, interoffice, or relay facilities.	200	$200.
Application for other than initial construction permit, modification of construction permit or license for central office, interoffice, or relay facilities.	50	$100.
Application for an initial construction permit or for relocation of rural subscriber facilities.	100	$150.
Application for other than initial construction permit, modification of construction permit or license for rural subscriber facilities.	50	$100.
Application for license for operation of stations at temporary fixed locations.	20	$40.
Application for renewal of license of central office, interoffice, or relay station.	250	None.
Application for renewal of license of rural subscriber station	50	None.

See footnotes at end of table.

	Filing fee	Grant fee
POINT-TO-POINT MICROWAVE RADIO SERVICES		
Applications for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to existing points of communication or for relocation of facilities.[4 6]	100	$300.
Application for license for operation of a station at temporary fixed locations.	100	$200.
Application for other modification of construction permit or modification of license.	50	$50.
Application for renewal of license	50	$200.
LOCAL TELEVISION TRANSMISSION SERVICE		
Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to an existing station location or for relocation of facilities.[4]	100	$300.
Application for license for operation of an STL station at temporary fixed locations.	100	$200.
Application for license for operation of a mobile television pickup station	100	$200.
Application for other modification of construction permit or modification of license.	50	$50.
Application for renewal of license	50	$200.
INTERNATIONAL FIXED PUBLIC RADIO-COMMUNICATION SERVICES		
International Fixed Public Station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.[4]	$300	$1,000.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter(s) being replaced if both applications are filed simultaneously).	150	$200.
Application for change of location of an authorized station	300	$800.
Application for modification of license	50	$200.
Application for renewal of license	200	$400.
International Control Station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.[4]	200	$800.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter being replaced if both applications are filed simultaneously).	100	$500.
Application for change of location of an authorized station	200	$800.
Application for modification of license	50	$200.
Application for renewal of license	100	$200.
OTHER RADIO APPLICATIONS		
Application for assignment of an authorization or transfer of control (a separate fee is required for each call sign covered by the application).	20	$100.
All other common carrier radio applications	50	None.
SATELLITE COMMUNICATIONS SERVICES		
Application for initial construction permit for commercial transmit/receive earth station.[4]	400	1 percent of construction cost as set forth in the application, not to exceed $50,000.
Application for initial construction permit for a commercial receive only or transportable earth station.[4]	200	Do.
Application for modification of construction permit or license or for construction permit for additional equipment at an existing commercial earth station.	200	1 percent of construction cost as set forth in the application.
Application for authority to operate a transportable earth station at a fixed site.	200	$400.
Application for renewal of license for a commercial transmit/receive earth station.	200	$10,000
Application for renewal of license for a commercial receive only earth station.	100	$1,000.
Application for initial construction permit or modification of construction permit or license for an auxiliary station (boresight) to an earth station or for a telemetry, tracking and control station.	100	1 percent of construction cost as set forth in the application.
Application for renewal of license of an auxiliary station to an earth station or for a telemetry, tracking and control station.	100	$400.
Application for initial construction permit per satellite	500	$10,000.

See footnotes at end of table.

	Filing fee	Grant fee
Application for authority to launch and operate satellites, per satellite	500	1 percent of satellite construction cost as set forth in the application (due 45 days after successful launch and operation).
Application for assignment of a commercial transmit/receive earth station or satellite construction permit or license or transfer of control of a licensee or permittee, per earth station or satellite.	200	$400.
Application for assignment of a commercial receive only or transportable earth station construction permit or license or transfer of control of a licensee or permittee, per earth station.	50	$100.
Application for communications common carrier for authorization to own stock in the Communications Satellite Corporation.	50	$100.
Any other application filed under the Communications Satellite Act or the Communications Act of 1934 in the Satellite Communications Services.	50	$100.
COMMON CARRIER NONRADIO APPLICATIONS		
Section 214 applications for construction landline coaxial cable.[9]	200	$10 per route mile.
Section 214 applications to extend or supplement facilities by construction of landline voice cables or installation of carrier equipment on landline wire, cable, or radio routes.[9]	100	$12 per 100 equivalent 4 kHz channel miles authorized.[10]
Section 214 applications to lease facilities from other carriers (except overseas channels).[9]	50	$8 per 100 equivalent 4 kHz channel miles authorized.[10]
Section 214 application for overseas cable construction	2,000	$100 per route mile (nautical).
Section 214 applications to establish communication channels on overseas cables.[10]	100	$20 per 100 equivalent 3 kHz miles authorized.[10]
Cable landing license	200	$200.
Section 214 application to acquire overseas cable channels	100	$12 per 100 equivalent 3 kHz channel miles authorized.[10]
Section 214 application to acquire domestic circuits to interconnect international circuits:		
Circuits outside of the United States	50	None.
Circuits within the United States or territories	50	$8 per 100 equivalent 4 kHz channel miles authorized.[8] [10]
Section 214 applications to install carrier equipment to establish channels of communication at an earth station.	200	1 percent of equipment and installation cost as set forth in the application.
Section 214 application to establish and provide channels of communication via satellite.	100	$400.
Section 214 application to acquire satellite channels	100	$40 per equivalent 4 kHz channel.
Section 214 applications to discontinue, reduce or impair services to the public:		
Telephone companies	100	$100.
Telegraph companies [11]	20	$30.[11]
Public Coast Stations	20	$30.
Interlocking Directorate applications	20	$80.
Section 221 applications	20	$500.
Tariff applications to change charges or regulations on less than statutory notice.	50	None.
Application for certification for priority restoration of leased intercity private line service in emergency situations.	10	$20 per ckt. certified.
All other Common Carrier nonradio applications	50	None.

(Footnotes 1 through 9 to remain unchanged, however, No. 10 is amended and No. 11 is added.)

[10] Fees for other than 4 kHz channels or 3 kHz channels will be the appropriate multiples or fractions of the 4 kHz or 3 kHz channel fee. If digital channels are to be provided, two 4.8 k/b/s/ (or one 9.6 k/bs) data channels are to be considered the equivalent of one 4 kHz analog channel for the purpose of calculating the grant fee.

[11] For blanket applications filed pursuant to Section 63.67 or Section 63.68 of the Rules, the grant fee shall apply to each individual main or branch office for which reduction of hours is authorized.

5. It is proposed that Section 1.1115 paragraph (a) be amended as follows:

§1.1115 Schedule of Fees for the Safety and Special Radio Services.

(a) Except as provided in paragraph (c) of this section, the fees set forth in the schedule below shall accompany all formal applications for authorization in the Safety and Special Radio Services:

All authorizations (except as noted below)	$40
Single transmitting unit (except as noted below)	40
Ship license for business use, w/o interim authorization [1]	40
Ship license for nonbusiness use, w/o interim authorization [1]	20
Ship license for business use, w/interim authorization [1]	50
Ship license for nonbusiness use, w/interim authorization [1]	25
Aircraft license for nonbusiness use	20
Multiple transmitting units (e.g. mobile units or a base station, or stations, with mobile units; aircraft on fleet licenses; ship on plurality licenses), or modification of authorizations to add transmitting units; the single transmitting unit, or other, basic filing fee as specified above, plus, for each additional transmitting unit	5
Paging receivers, each	5
Class C and D Citizens license with authority to operate up to five transmitters	25
Additional transmitters, for each transmitter	1
Common Carrier Public Coast Stations: Initial license and renewal, or assignment	75
Amateur Service:	
Initial license, renewal and new class of operator license	10
Modification of license without renewal	5
Modification of license with renewal	10
Special Call sign (plus other applicable fee)	25
Operational fixed stations using frequencies above 952MHz:	
Initial license w/one transmitter and five year renewal	100
Each additional transmitter on same application (plus other applicable fee)	25
Assignment of license (no additional fee for transmitters)	75
Yearly renewal	20

6. It is proposed that Section 1.1116 be amended to read as follows:

§ 1.1116 Schedule of fees for Cable Television and Cable Television Relay Services.

(a) Applications and petitions filed in the Cable Television and Cable Television Relay Services shall be accompanied by the fees prescribed below:

Application in the Cable Television Relay (CAR) Service:	
For a construction permit	$50
For a license or renewal	15
For a modification of construction permit or license	15
For reinstatement of expired construction permit or license	15
For assignment of license or construction permit, or transfer of control	25
Application for certificate of compliance, pursuant to § 76.11	50

Note: If multiple applications for certificate of compliance are filed by cable television systems having a common headend and identical ownership but serving or proposing to serve more than one community, the full *$50* fee will be required only for one of the communities; *$15* will be required for each of the other communities.

Petitions for special relief, pursuant to § 76.7	25

[1] An interim ship station license permits the operation of a station during the period (usually about 3 weeks) the Commission is processing an application for a 5-year term license. Requests for interim authority must be presented in person by an applicant to the nearest Field Engineering Office except in Alaska in which it may be mailed to the Field Engineering Office in Anchorage. (See sec. 83.35 of the Commission's Rules). [Subparagraph (b), including the duplicate license fee of $6, and subparagraph (c) (1) through (8) of the current schedule will not be changed.]

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Note: If a petition for special relief involves more than one cable television community, and the communities are served by cable facilities having a common headend and identical ownership, only a single $25 fee is required.[2]

(b) An annual fee shall be paid by each cable television system on or before April 1 of each year for the preceding calendar year. The fee for each system shall be equal to the number of its subscribers times 40 cents. The number of its subscribers shall be determined by averaging the number of subscribers on the last day of each calendar quarter. (See § 1.1102(c).)

Note: . . . (No change is proposed in the note)

(c) Fees are not required for petition for special relief filed pursuant to § 76.7 of this chapter by a noncommercial educational broadcast station.

7. It is proposed that Section 1.1117 be amended to read as follows: Schedule of fees for commercial radio operator examinations and licensing.

(a) Applications filed for commercial radio operator examinations and licensing shall be accompanield by the fees prescribed below:

Applications for operator license or permit:

First-class license, either radiotelephone or radiotelegraph, new or renewal	$10
Second-class license, either radiotelephone or radiotelegraph, new or renewal	10
Third-class permit, either radiotelephone or radiotelegraph, new or renewal	10
Provisional radiotelephone third-class certificate with broadcast endorsement—1-year term	10
Restricted radiotelephone permit, new	10
Restricted radiotelephone permit (alien)—one-year term	10
Each endorsement of license	2
Each verification card (FCC Form 758–F)	2
Each posting statement (FCC Form 759)	2
Each duplicate or replacement (any class)	2

(b) When an application is filed for a new license or permit, and the applicant fails to appear for the required examination within 18 months, the application will be null and void for his failure to prosecute and no refund will be made.

(c) Pursuant to Section 13.71(b), as amended, no fee is required for applications filed for replacement of licenses or permits filed because of change in name only.

8. It is proposed that Section 1.1120 be amended to read as follows:

§ 1.1120 Schedule of fees for equipment type approval, type acceptance and certification

Type approval, type acceptance, certification or approval of subscription shall require payment of fees as prescribed below.

Certification

	Filing	Grant
1. Receivers:		
(a) Television receiver with FM reception capability, or with built-in VTR, or with both, with or without capability of receiving other signals	$50	$200
(b) All other television receivers	50	150
(c) AM/FM receiver with or without capability of receiving other signals (excluding AM/FM/TV receiver in paragraph (a))	50	100
(d) FM receiver with or without capability of receiving other signals (excluding FM/TV receiver in para. (a))	50	100
(e) Any other receiver (includes communication receiver, auditory training device receiver, receiver portion of transreceiver, etc.)	50	100
2. Low Power Communication Devices (under Pt. 15) (includes control transmitter for door opener, bio-medical telemetry transmitter)	50	100
3. Field Disturbance Sensors (under Pt. 15)	50	100
4. ISM equipment (under Pt. 18) (includes industrial heaters, Ultrasonic equipment, microwave ovens (in special cases only). No fee required for certificates filed for use of Industrial Heating Equipment on Form 724 in accordance with Section 18.116 of the Commission's Rules.)	50	100

[2] This Note was adopted by the Commission in its "Reconsideration of Report and Order in Docket No. 18397," adopted June 16, released June 26, 1972, 37 Federal Register (No. 136) at 13864, Col. 3 (July 14, 1972).

	Filing fee	Grant fee
TYPE ACCEPTANCE		
1. Application for type acceptance for each equipment type [2 3 4 5]	50	150
2. Application for the addition of each rule part to existing type acceptance for each equipment type as identified by manufacturer or trade name and type number	50	100
3. Approval of subscription television systems	500	1,000

Type Approval

Item	Filing fee	Grant fee
1. Application or submission for type approval: [7]		
(a) Part 73:		
(1) Broadcast modulation monitors SCA and stereo	$2,400	$600
(2) Broadcast modulation monitors—other	1,200	300
(3) Broadcast antenna phase monitors	1,200	300
(4) Other broadcasting equipment	1,200	300
(b) Parts 81 and 83:		
(1) Ship transmitters, including lifeboat transmitters	1,000	200
(2) Radar	750	250
(3) Ship automatic alarm systems	3,000	1,000
(4) Ship alarm automatic keyers	750	250
(5) Other maritime devices	750	250
(c) Part 15:		
(1) Wireless microphones	900	300
(2) Auditory training transmitters	1,500	500
(3) Class I TV devices	250	50
(4) Other devices	900	300
(d) Part 18:		
(1) Medical diathermy and Subpart H equipment (13.56, 27.12, 40.68 MHz)	1,200	400
(2) Medical diathermy, microwave ovens and other Subpart H equipment (915 MHz and above)	1,500	500
(3) Medical ultrasonic (no optional accessories)	900	300
(4) Medical ultrasonic (optional accessories)	1,500	500
(5) Industrial ultrasonic (no optional accessories)	900	300
(6) Industrial ultrasonic (optional accessories)	1,800	600
(7) Other devices	900	300
2. Applications for modification of existing type approved equipment: [8]		
(a) Modifications which require testing: 75 percent of the filing and grant fees listed above for the particular class of equipment.		
(b) All other modifications:	75	25

Note: Text of footnotes requires no change.

History Re Fees From 1929 to February 1970

Although for a period of approximately 22 years the Congress, the Executive Department, the Federal Radio Commission, and the Federal Communications Commission (FCC) made or debated legislative proposals concerning "user-charge" or fees for services provided and licenses issued by the FCC and its predecessor,[1] it was not until after the Legislative Reorganization Act of 1946[2] that the Congress, the Bureau of the Budget and agencies in the executive branch of the government embarked on an extensive study of fees for services which such agencies render to "special interests". In 1950 the Senate's Committee on Expenditures of the Executive Department[3] considered the question of the practicability of establishing fees for services which the Federal government renders to those interests and stated:

"The Committee's jurisdiction in this relation springs from its statutory duty under the Legislative Reorganization Act . . . of 'studying the operation of the government activities at all levels with a view to determine its economy and

[1] See, for example, S. Res. 751, 70th Cong. 2d Sess., 70 Cong. Rec. 50–58 (1929); S. 6, 71st Cong. 1st Sess. Hearings before the Committee on Interstate Commerce of the Senate, pp. 926, 999, 1007–1010, 1611–1613, and 1756–1757 (1929); H.R. 7716, 72d Cong. 1st Sess. (Section 17 of the Bill dropped on Dec. 14, 1932); S. 5201, 72d Cong. 2d Sess. (76 Cong. Rec. 542); H.R. 14688, 72d Cong. 2d Sess. (1933); H.R. 6440, 75th Cong. 1st Sess. (1937); S. Res. 94, 76th Cong. 1st Sess. 84 Cong. Rec. 2260 (1939).

[2] Pub. Law No. 601, 79th Cong. 2d Sess. (1946).

[3] A then standing Committee of the Senate in the 81st Congress.

efficiency'. The Committee's approach, therefore, is not from a revenue-raising perspective, but is rather with the view of determining the feasibility of offsetting items now necessarily included in the Federal budget as nonreimbursable by transferring the financial burden thereof to the special beneficiaries. Thus at the outset, it is desired to draw a clear line of distinction between services which the Federal government renders, either upon request or by law, to special interests to which benefits thereby accrue at the expense of all the taxpayers, and services for which the government is inherently liable and the benefits of which accrue to the people at large.[4]

Following the cooperative work of that Senate Committee, the corresponding House Committee, and the Budget Bureau with the various executive agencies, the Congress on August 31, 1951, passed the Independent Offices Appropriations Act of 1952[5] part of which, in essence, declared that any service, license or similar thing of value provided by any federal agency should be self-sustaining "to the full extent possible" and that the head of each agency is authorized to prescribe such fee as he shall determine to be fair and equitable "in case none exists," or "re-determine, in case of an existing one," taking into consideration (1) "direct and indirect cost to the government," (2) "value to recipient," (3) "public policy or interest served" and (4) "other pertinent facts."

House Report No. 384, Committee on Appropriations, 82d Cong. 1st Sess., at p. 3 (1951), made the following statement regarding Title V of the aforementioned Act:

"The bill would provide authority for Government agencies to make charges for these services in cash where no charge is made at present, and to revise charges where present charges are too low, except in cases where the charge is specifically fixed by law or the law specifically provides that no charge shall be made."

After entertaining some doubts as to its authority to levy fees, the FCC in 1953 finally concluded that (a) if fees were charged under an over-all government policy, no legislation additional to Title V would be needed for initiation of rule-making looking toward promulgating a reasonable schedule of fees; and (b) certain features of the then current proposal (the overall approach plus assessment of fees only where services were "primarily of benefit to the private groups") diminished apprehension previously voiced in connection with user-charge proposals.

On November 5, 1953 the Budget Bureau issued its Circular No. A–25 calling for agencies to complete their studies on the fee question so that proposed schedules of fees could be made public by February 1, 1954. On January 27, 1954, the Commission issued a Notice of Proposed Rule Making in Docket No. 10869[6] proposing a schedule of fees for the Commission's instruments of authorization and services, designed to implement Title V of the Independent Offices Appropriations Act of 1952 and the Budget Bureau Circular.

Following the above and the introduction of Bills proposing to amend the Communications Act to permit only "nominal" charges or fees[7], the Senate Committee on Interstate and Foreign Commerce, in executive session, on March 24, 1954, adopted a resolution[8] calling for the suspension by the FCC of action involving fees including the Notice of Proposed Rule Making in said Docket No. 10869. By its Order released February 16, 1962, the FCC complied by withdrawing its Notice of Proposed Rule Making and terminating the proceeding initiated in 1954 in that Docket 10869[9].

After much intra-government discussion, study and several legislative proposals from 1955 to 1961[10] the FCC issued a Notice of Proposed Rule

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[4] S. Rep. No. 2120, 81st Cong. 2d Sess. (1950) at p. 1.
[5] Pub. Law No. 137, 65 Stat. 290, 31 U.S.C. 483(a)
[6] 19 Fed. Reg. 622 (1954)
[7] S. 2926 and H.R. 7842, 83d Cong. 2d Sess. (1954); S. 3203, 83d Cong. 2d Sess. (1954)
[8] 100 Cong. Rec. 3783
[9] 27 Fed. Reg. 1728
[10] See, for example, S. Res. 140 of July 25, 1955 which referred the fee program study to the Senate Committee on Government Operations, S. Rep. 1467, 84th Cong. 2d Sess. (1959) entitled "Fee for Government Services"; H.R. 9538, 85th Cong. 2d Sess. (never reported out of Committee); the staff memorandum No. 85–1–70 dated Oct. 28, 1957 of the Senate Committee on government operations; Budget Bureau's Bulletin No. 58–3, Nov. 18, 1957, calling for removal of all limitations or restrictions on agencies' authority to recover full costs for government services which provide a special benefit; Budget Bureau's Circular A–25, Sept. 23, 1959; H.R. 12668, 86th Cong. 2d Sess. (1960); H.R. 1118, 87th Cong. 1st Sess. (1961); 21 The Federal Bar Journal No. 2, pp. 209–218.

Making [11] proposing a schedule of fees generally for filing applications in the various areas of FCC regulation.

On May 6, 1963, the FCC, adopted a Report and Order,[12] that established a fee schedule containing nominal fees covering all areas of FCC licensing and regulation at the time. It was pointed out therein that the FCC in conducting its licensing and regulatory activities, conveys special benefits to identifiable recipients above and beyond those which accrue to the public at large; that in fairness to the general taxpayers, who bears the major burden of supporting Federal agencies, the government has adopted the policy that the recipient of special benefits conveyed by a Federal agency should pay a reasonable charge for the benefits received; that in accordance with that policy the FCC determined that the public interest would be served by the establishment of a fair and equitable schedule of fees for its licensing and regulatory activities, thereby recouping for the government a portion of the FCC's cost of regulating the communications industry.

Subsequently, seventeen petitions for reconsiderations of the FCC's Report and Order of May 6, 1963, were filed and on September 25, 1963, the FCC adopted a Memorandum Opinion and Order [13] disposing of the petitions and effecting minor changes and clarifications in the schedule while also pointing out that, with respect to seeming disparities complained of by some petitioners, the requirements of the application procedures of the several Bureaus of the Commission do not readily lend themselves to a uniform schedule of fees completely devoid of seeming or minor disparities; and that the disparities would be resolved from time to time in the course of a continuing review which would be undertaken with respect to the fee schedule.

In October of 1963, H.R. 6697 was introduced in the 88th Congress, 1st Session, to amend the Communications Act by adding thereto a new section (Section 417) to prohibit the FCC from assessing fees or charges, etc., unless specifically permitted by Federal law other than Title V of the Independent Offices Appropriation Act of 1952. The bill, which ultimately died in Committee, voiced the position of those still attacking the authority of the FCC to establish fees.[14]

A joint Petition for Review was filed December 6, 1963, in the U.S. Court of Appeals for the Seventh Circuit which sought review of the FCC's May 6, 1963 Report and Order and its October 7, 1963 Memorandum Opinion and Order respectively adopting and reaffirming with minor changes, the schedule of fees. After actions on stay requests, injunctions, etc. the effective date of the fee schedule was changed by the Court to March 17, 1964,[15] from January 1, 1964.[16]

In an Opinion of July 10, 1964, the U.S. Court of Appeals for the Seventh Circuit affirmed both the validity of the Commission's action and the reasonableness of the fees adopted. *Aeronautical Radio, Inc. et al.* v. *United States and FCC*.[17]

On March 19, 1965 the FCC released another Notice of Proposed Rule Making [18] proposing several amendments, including additions, deletions and reductions regarding filing fees.

On November 17, 1965 the Commission adopted the Report and Order in said Docket [19] amending its schedule of application filing fees, which became effective December 29, 1965. The rules became Subpart G Part 1 of the Commission's Rules, Section 1.1101 *et seq*.

On February 19, 1970, the FCC released its Notice of Proposed Rule Making in Docket No. 18802 [20] (and on March 4, 1970 its Supplemental Notice [21]) proposing widespread changes in the then current fee schedule.

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[11] Docket No. 14507, 27 Fed. Reg. 1729 (1962).
[12] Docket No. 14507, 34 FCC 811, 28 Fed. Reg. 4758 (1963).
[13] 28 Fed. Reg. 10911 (1963).
[14] See also H. Doc. No. 15, Pt. I 88th Cong. 1st Sess. pp. 14–15 and Hearings before the House Committee on Ways and Means on the President's Tax Message Pt. I pp. 787–88, 88th Cong., 1st Sess. and 107 Cong. Rec. pp. 14587–88 where the Chairman of the House Interstate and Foreign Commerce Committee agreed on the floor of the House that Title V would vest authority in the FCC to establish a schedule of fees.
[15] 29 Fed. Reg. 2847 (1964).
[16] 28 Fed. Reg. 13510 (1963).
[17] 335 F. 2d 304. On January 18, 1965, the United States Supreme Court denied a Petition for certiorari seeking review of that action of the Seventh Circuit Court, 379 U.S. 966.
[18] Docket 15881, 30 Fed. Reg. 3822.
[19] 1 FCC 2d 1345.
[20] 35 Fed. Reg. 3815 (1970), 21 F.C.C. 2d 502.
[21] 35 Fed. Reg. 4557 (1970), 23 F.C.C. 2d 183.

F.C.C. 72-1123

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
APPLICATION FOR EXEMPTION FROM THE RADIOTELEGRAPH PROVISIONS OF TITLE III, PART II OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED AND CHAPTER IV OF THE SAFETY OF LIFE AT SEA CONVENTION, LONDON, 1960 FOR THE UNITED STATES CARGO VESSEL SEDCO 702.

ORDER

(Adopted December 13, 1972; Released December 15, 1972)

BY THE COMMISSION:

1. The Commission has received an application (File No. X-1132) from SEDCO, Inc. for exemption from the radiotelegraph requirements of Title III, Part II of the Communications Act and Chapter IV of the Safety Convention for the United States cargo vessel SEDCO 702.

2. The applicant makes the following statements in support of his request:

(a) the SEDCO 702 is a mobile drilling rig capable of self propulsion; however, it will be towed on the heaviest navigated Atlantic trade routes from the United States to the drilling area in the North Sea within the jurisdiction of another country;

(b) after arrival in the North Sea, the vessel will move an average of 7.1 times per year for an average distance of 90 miles and during these moves will be accompanied by an ocean going vessel;

(c) the SEDCO 702 when at a drilling location or in transit cannot readily assist other vessels in distress because of its unique configuration, relatively slow speed and lack of maneuverability nor can it easily come alongside a vessel in distress or launch a rescue boat without great difficulty;

(d) the vessel is equipped with a radiotelephone station which will comply with Title III, Part II of the Communications Act and Chapter IV of the Safety Convention; and

(e) the vessel, while at the drilling sites, will be within radiotelephone communication range of numerous coast stations, and the vessel will always be within 150 nautical miles of the nearest land.

3. When the vessel is navigated from a United States port to the drilling location within the jurisdiction of another country, it is not subject to the Communications Act because it is towed but it is subject to the Safety Convention since it is also propelled by mechanical means. When the vessel is further navigated on short moves in the North Sea accompanied, but not towed, by an ocean going vessel, it would be subject to the Communications Act and if on these occasions the vessel moves from the territorial waters of one country to another, it would also be subject to the Safety Convention.

4. Under the circumstances described, we find it unreasonable and unnecessary to require the SEDCO 702 to comply with the radiotelegraph requirements of the Communications Act and the Safety Convention when towed to the drilling site or on the short moves in the North Sea drilling area.

5. Accordingly, IT IS ORDERED, That the United States cargo vessel SEDCO 702, be exempt from the radiotelegraph provisions of Regulation 3, Chapter IV of the Safety of Life at Sea Convention, London, 1960, when towed on the single voyage from a United States port to the drilling site in the North Sea commencing approximately January 1, 1973; Provided, That the vessel is equipped with a radiotelephone station which complies with the provisions of Regulation 4, Chapter IV of the Safety Convention.

6. Further, IT IS ORDERED, That the SEDCO 702 be exempt from the radiotelegraph provisions of Title III, Part II of the Communications Act of 1934, as amended and Regulation 3, Chapter IV of the Safety of Life at Sea Convention, London, 1960, for a period of one year commencing January 1, 1973 when navigated in the North Sea; Provided, That, the vessel is equipped with a radiotelephone installation which complies with the provisions of Title III, Part II of the Communications Act and Regulation 4, Chapter IV of the Safety Convention, respectively and the vessel is never navigated more than 150 nautical miles from the nearest land.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1139

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART O OF THE COMMISSION'S RULES AND REGULATIONS TO PROVIDE ADDITIONAL DELEGATED AUTHORITY TO THE CHIEF ENGINEER

ORDER

(Adopted December 13, 1972; Released December 20, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID CONCURRING IN THE RESULT.

1. On February 9, 1970, the Commission approved the establishment of a Spectrum Management Task Force with responsibility for implementing and administering a Regional Spectrum Management Program. The Task Force now functions within the Office of the Chief Engineer. The Commission has selected Chicago, Illinois, as the location of the first regional center and instructed the Task Force to proceed with a program to establish and operate the Regional Spectrum Management Center.

2. Part O of the Commission Rules was amended, effective February 10, 1971, to reflect the establishment of the Spectrum Management Task Force (see Sections 0.31, 0.32 and 0.38). It is now necessary to amend Part O for the required delegated authority needed by the Task Force to discharge its responsibilities.

3. The authority delegated is to the Chief Engineer to act on matters involving the Public Safety, Industrial, Land Transportation and Citizens Radio Services (Class A), and the Remote Pickup Broadcast Service. The specific delegations are contained in the Appendix hereto.

The amendments set forth in the Appendix to this Order relate to internal Commission organization and practice so that the prior notice provisions of 5 U.S.C. 553, do not apply, and the amendments can be made effective immediately. Authority for the promulgation of these amendments is contained in Sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(d), and 303(r).

Accordingly, IT IS ORDERED, effective December 29, 1972, that the Rules and Regulations of the Commission ARE AMENDED as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part O of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. A new Section 0.242 is added, to read as follows:

§ 0.242 Additional authority delegated to the Chief Engineer.

The Chief Engineer insofar as the Regional Spectrum Management program is concerned is delegated authority to act, in coordination with the Bureaus having primary responsibility for the radio service involved, upon the following applications, requests, extensions, and other matters involving frequencies below 512 MHz allocated to the radio services listed in paragraphs (a) and (b) of this section, which are not in hearing status, in those areas where a regional center has been established:

(a) In accordance with applicable rules, all applications filed in a Region for authorizations in the Public Safety, Land Transportation, and Industrial Radio Services (excluding applications in the Industrial Radiolocation Service) and for Class A citizens Radio Station authorizations.

(b) In accordance with applicable rules, all applications filed in a Region in the Remote Pickup Broadcast Service (shared frequencies only) for construction permits, station licenses, modification of station licenses, and special temporary authorizations.

(c) On the following matters insofar as they involve the Public Safety, Industrial, Land Transportation (excluding the Industrial Radiolocation Service), Citizens Radio Service (Class A only) or Remote Pickup Broadcast Service (shared frequencies only).

(1) Requests for extensions of time for equipment or service tests or within which to comply with technical requirements specified in authorizations, orders and rules or releases of the Commission.

(2) Requests for withdrawal of papers in accordance with § 1.8 of this chapter.

(3) Requests for extension of time within which briefs, comments and pleadings may be filed in rulemaking proceedings.

(4) To make the finding of emergency involving danger to life or property or due to damage to equipment, as provided by Section 308(a) of the Communications Act of 1934, as amended.

(5) Cancellation of station licenses, construction permits, or other authorizations upon the request of the licensee or permittee or upon abandonment of the station.

(6) Petitions or requests seeking waiver of or exception to any rule, regulation or requirement, and to act upon petitions or requests relating to the assignment of frequencies but requiring action under § 2.102 of this chapter, when he finds that the operation for which permission is sought (i) is of a nonrecurring nature and does not warrant rule making proceedings with a view to establishing it on a regular basis, (ii) will not exceed 180 days, and (iii) will cause no harmful interference to any service operating in accordance with the Table of Frequency Allocations. This delegation does not apply to requests for renewals of any authority to operate granted hereunder.

(7) To grant the authorizations provided for in § 2.102(c) of this chapter.

(8) To act on requests for waiver of application procedures to allow a licensee to submit a request for the identical modification or assignment of a number of outstanding authorizations without filing a separate application for each station. Action taken under this delegation does not include authority to waive or reduce applicable fee requirements which shall be determined as if separate applications were filed for each station.

(9) To dismiss applications without prejudice in cases where, prior to designation of such application for hearing, an applicant has failed to answer official correspondence or a request for additional information from the Commission.

(10) Requests for extension of time within which to file pleadings concerning applications which are not in hearing status.

(11) To dismiss petitions and other pleadings relating to matters not in hearing status which have clearly been rendered moot.

(12) To dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(13) To dismiss or deny petitions for rule making which are repetitive or moot or which, for other reasons, plainly do not warrant consideration by the Commission.

(14) To act on requests for assignment of call signs to new stations in the Citizens Radio Service (Class A only) and for changes in the call signs of existing stations in this service.

(d) Except as otherwise provided in § 1.61 of this chapter, with respect to the construction, marking, and lighting of antenna towers and supporting structures, to exercise the functions of the Commission as set forth in Part 17 of this chapter; Provided, however, That in cases in which the Federal Aviation Administration recommends denial of any application, the Chief Engineer will submit the application to the Commission for appropriate action.

2. Section 1.61 is amended by deleting Paragraph (a) and substituting a new Paragraph (a) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Except for those services and in those areas being managed by the Spectrum Management Task Force, antenna surveys are conducted by the Antenna Survey Branch of the Engineering and Facilities Division, Field Engineering Bureau.

F.C.C. 72-1138

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of SPECTRUM MANAGEMENT: ESTABLISHMENT OF FIRST REGIONAL SPECTRUM MANAGEMENT CENTER IN CHICAGO, ILL.; AND AMENDMENT OF PARTS 1, 2, 21, 74, 89, 91, 93, AND 95 OF THE COMMISSION'S RULES RELATING TO LAND MOBILE ALLOCATIONS AND ASSIGNMENTS.	Docket No. 19150

SECOND REPORT AND ORDER

(Adopted December 13, 1972; Released December 20, 1972)

BY THE COMMISSION: COMMISSIONERS ROBERT E. LEE AND REID CONCURRING IN THE RESULT.

INTRODUCTION

1. By virtue of this Second Report and Order, the Commission's Rules are amended to provide, in the public interest, for a more efficient and equitable administration and management of the Land Mobile Radio Services in an area of approximately 96,000 square miles which has Chicago, Illinois at its approximate center.

2. A Notice of Proposed Rule Making in this proceeding was published in the Federal Register on February 10, 1971 (36 F.R. 2793); and in the Reports of the Commission [27 F.C.C. (2d) 400]. A First Report and Order in the proceeding was adopted on October 28, 1971, and published in the Federal Register on November 12, 1971 (36 F.R. 2167); and in the Commission's Reports at 32 F.C.C. (2d) 347. As we noted in the First Report and Order, all the comments and reply comments that were filed were carefully read and considered before arriving at our conclusions therein. The same is true for this Report and Order. All of the major and relevant views and arguments are discussed below. To the extent that certain views and arguments are not specifically discussed or cited, they are believed to be affinitive to the major views and have been considered in that context.

PURPOSE OF PROCEEDING

3. In Part I of our Notice there was detailed at considerable length the reasons and purposes for initiating this proceeding. It was noted that measures must now be taken to insure that a reasonable accommodation of the ever-increasing demands and uses for radio may be realized in both an efficient and equitable fashion. In the Land Mobile Radio Services, where the demand for facilities is growing at the greatest rate, the need for better and more efficient assignment and

use of frequency space was and is acknowledged to be critical. The development of sophisticated monitoring techniques and the application of computer technology in the frequency assignment process have now introduced important new techniques for management and administration of the spectrum which have not been available heretofore; and which, when properly applied will achieve a measure of the better and more efficient spectrum use that both the Commission and the public seek. In recognition of the fact that many of the problems afflicting the land mobile services are regionally oriented and best solved at the regional level, a land mobile spectrum management program with a regional organization and administration is being implemented.

4. The first Regional Office has in fact been established in the Chicago area and is currently engaged in collecting and analyzing data, and building a data base for the Land Mobile Services.[1] All of the necessary tools, to include highly sophisticated monitoring equipment and a computer have been provided to assist this effort. Mathematical models have been constructed which portray the environment in which a licensee will operate; and highly trained and skilled personnel have been provided to staff the Regional Office.

SCOPE AND METHODOLOGY

5. All persons commenting agreed in principle that more effective and efficient management of the radio spectrum would be in the public interest. Some disagreement however centered on the methodology chosen to initiate this spectrum management program; and the scope of this proceeding. To treat the question of methodology first, it was suggested that the Commission conduct an academic-like experiment before actually launching any full-scale implementation of spectrum management plans or schemes looking to use-optimization. In settling upon methodologies, careful consideration was given to the desirability or lack of desirability of conducting an academic-like experiment or project prior to proceeding with a full scale effort of the magnitude that has been initiated in Chicago. It was our conclusion, in view of the time factors and complexities involved in any undertaking of the sort contemplated by an experimental process or indeed the process we have chosen to use and which is reflected in this proceeding, that immediate and realistic action was both warranted and required. Thus, the difficulties incident to the conduct of an experiment—which include among other things, agreement on the scope of the experiment, its participants, cost, etc., while significant in themselves, become critical in terms of the time that would be required to define these parameters, conduct the experiment and translate its results into plans, programs, rules, etc. In the meantime, of course, the situation in the Land Mobile Services would more than likely have worsened—rendering effective solutions even more difficult to define and implement. The approach to spectrum management that the Commission has chosen to follow in this proceeding, represents, in our view a reasonable compromise between full scale experimentation, and a perpetuation of the cumbersome procedures now being used.

[1] See First Report and Order in this Docket.

6. Many persons voiced dissatisfaction with the scope of the proposal—particularly insofar as it was confined to the Land Mobile portion of the spectrum alone, and did not propose inroads into the television broadcast bands. This argument looks to the simple reallocation of spectrum space as being the ultimate solution to Land Mobile problems—at least as those problems are viewed by those persons suggesting this convenient though simplistic approach. This approach is predicated on assumptions that (1) the existing Land Mobile bands are totally saturated and therefore (2) better utilization of the existing land mobile allocation is incapable of realization and, logically, (3) that land mobile use of radio is paramount to other uses, particularly television. Our experience in Chicago and elsewhere may well reveal total saturation and/or an inability to effectively manage the existing land mobile portion of the spectrum. For the present, however, it is our purpose to determine, through the regional spectrum management program using monitoring and other techniques, whether saturation is or is not a reality or whether what is described as saturation is indeed that, but is a regional, local, service or channel phenomenon or combinations of these; and whether the application of modern problem-solving techniques and tools may effectively cure the land mobile problem.

7. The major disability in any proposed reallocation of spectrum space at this time however is the absence of truly meaningful information upon which to predicate a reallocation. As in the past, no one can, with any degree of certainty, point to comprehensive or quantitative data or information as to signal populations across the Land Mobile bands and upon which reliance might be placed for a proposed reallocation. In the past, reallocations were for the most part ordered on the basis of representations by users as to their needs, without any truly efficient capability of measuring the actual use being made of the spectrum by the various users or groups of users in various locales in juxtaposition to one another. With the monitoring capability that we now have however, it will be possible, with the passage of time, to describe signal populations quantitatively and draw some meaningful conclusions therefrom and, if so warranted, propose reallocation or other solutions. But, to reallocate at this time would result in a continuation of the oft-criticized approach and practice of the past which oftentimes resulted in inequitable and inefficient allocations and reallocations which were based largely on insufficient and inadequate data and information.

8. In keeping with good principles of spectrum conservation, a greater effort will be exerted in the future towards making meaningful determinations as to precisely what the spectrum environment and inventory are in a given locale or area before any changes are proposed and made. And one of the tools by which we will be able, in the future, to make these determinations is a monitoring capability which will provide us with the needed factual data. Thus, we are not persuaded that any allocation of additional frequency space to the Land Mobile Services in Chicago is warranted at this time.

9. Our action in this proceeding is neither designed nor intended to foreclose Commission consideration of additional means of improving spectrum utilization. For example, we are presently considering the

advisability of expanding to other markets our program of UHF–TV/land mobile sharing adopted in Docket No. 18261. We expect that proceeding, as well as this one establishing our first Regional Spectrum Management Center in Chicago, to continue apace to help meet the needs of land mobile users.

MODIFICATION OF LICENSES OR REMOVAL FROM THE AIR

10. Objection was voiced to certain language in the Notice of Proposed Rule Making that was suggestive of license modification or removal. It should be made abundantly clear that our goal or purpose in inaugurating a Spectrum Management program and this proceeding in particular was and is to achieve the larger and more effective use of radio in the public interest that is admonished by Section 303(g) of the Communications Act. It is not our purpose to constrict the use of the spectrum by denying access to it by worthwhile and legitimate users. As this proceeding demonstrates, strict adherence to the Communications Act of 1934, as amended, and the Administrative Procedure Act (5 USC 551–559) in achieving the goals and changes believed to be warranted, is being observed.

REGIONAL PROCEDURES

11. Certain comments were directed to the fact that our proposal contained no provisions relating to resolution of disagreements that may eventuate over assignments or other decisions that are made in Chicago by our regional staff. We are asked to state explicitly how disagreements will be handled and what recourse will be available.

12. We assume that what is intended by these comments is not that the informal administrative process be made formal and codified; but rather that the public be assured that our regional staff will provide a receptive ear to any complaints that may arise. In this context, we have both legal and liaison groups at our Regional Office in Chicago whose duties, along with those of the Regional Manager, will encompass the receipt, consideration, and resolution of any disagreements or problems that may arise. In short, informal procedures constituting the vast bulk of administrative adjudication, and being the lifeblood of the administrative process, they will be used to the maximum. If experience with the regional administration of the Land Mobile Services dictates that distinct and formal regional procedures are necessary, they will be proposed. In the meantime, it is our judgment that the current procedures enumerated in Part 1 of our Rules are adequate; and will be invoked when informal resolution is unattainable at the regional level.

TWO CATEGORY ALLOCATION

13. An essential element of the method proposed to be employed in achieving spectrum efficiency and conservation was a categorization of frequencies into 2 pools. It was proposed, in essence, that highly time critical Police and Fire Radio Services be placed in the highest priority pool or category (Category I) and that all other uses or services be placed in a second pool or category (Category II) where an additional sub-division into 5 groups was detailed, as follows:

Category I	Category II				
	Group A	Group B	Group C	Group D	Group E
Police. Fire.	Special Emerg. Hiway Maint. Forest Cons. Local Gov't.	Power. Telephone Maint. Railroad.	Petroleum. Forest Prods. Mfrs., Spec. Ind. Motor Carrier. Auto Emergency. Business, Taxi. Motion Picture. Relay Press. Remote Pickup BC.	Dom. Public LM.	Citizens.

FREQUENCY RESERVOIR

14. The comments that were directed to this portion of the proposal reflect a predictable dissatisfaction by those persons currently experiencing a relatively uncrowded and uncongested environment. These persons are fearful that any sharing of the frequencies they currently use will result in a degradation of their current use. But while much dissatisfaction was expressed, extremely little in terms of alternative approaches or methods—other than retaining the *status quo*—was suggested. After a careful consideration of the comments that were directed to this portion of the proposal, we are persuaded that the categorizations and groupings proposed are a reasonable starting point for the management methodology we intend to employ in achieving use-optimization. In so concluding, we would point out, as we did in paragraph 16 of the Notice in this proceeding that—

* * * use optimization is an ultimate goal; and that the system to be used in obtaining it will evolve.

15. In formulating the 2 category proposal, it was our desire to keep the number of frequency pools to a minimum, while at the same time maintaining some system of priorities; and providing a measure of flexibility. With this in mind, Category II was subdivided into five groups with only Public Safety Services sharing in Group A of Category II. Because of their high priority, Group A licensees will receive discrete frequencies for their operations to the extent practicable—the same as licensees in Category I. Thus, where high priority activities are involved, such as some police, fire and forestry-conservation activities, an effort will be made to assign discrete frequencies. This will be our policy regardless of the category or group into which high priority uses such as fire-fighting and police are to be found.

16. If practicable, assignments will be made from an applicant's own Service frequencies in the pool. If none are available, then a search will be made of the frequencies in the pool which were contributed by the other services. It was for this reason that in forming the groups which will share, we attempted to place together services which would be compatible. In Group A, only Public Safety Services will be sharing and then only when the nature of the operations dictates such sharing is reasonable.

METHODOLOGY OF ASSIGNMENT

17. As emphasized in our Notice (paragraph 65), it is necessary that the spectrum management program establish criteria and priori-

ties which will clearly consider the requirements of all applicants and the merits of their applications. In addition to the accumulation of data, the development of such criteria and licensing procedures is, of course, a primary objective of the Chicago operation. Initially, we intend to grant licenses in the Land Mobile Radio Services in the Chicago District by applying mathematical models to optimize frequency assignments. Our engineering analysis will consider such factors as: co-channel and adjacent-channel interference, inter-modulation interference, predicted path loss due to propagation, calculation of radio coverage areas, and analysis of noise effect on licensed systems. The data obtained from our channel occupancy monitoring program will be factored into our consideration, as well as correlated with the data base information in the license files. The interference impact of the proposed system on existing land mobile communications will also be considered. Because of the germinal stage of our program at this time, it is unrealistic to assume that any or all of these factors would remain static and immutable. As with any developing program, we are likely to add or subtract, alter or modify our criteria, as experience dictates. In any event, the above-mentioned factors should be a good point of departure in our development of the necessary standards and criteria to implement the spectrum management program.

ASSIGNMENT CRITERIA

18. The questions of assignment criteria, service groupings, who should share and who should not, etc. were the most contentious concepts in our proposal. The comments directed to these matters asserted that criteria, standards, or guidelines relative to channel loading, sharing pools and groups, etc. had not been formulated and that as a consequence no attempt should be made to mix users or services. It was also pointed out, *inter alia*, that 1) functional needs must or should dictate system loading 2) area systems and state-wide systems should not be mixed, and 3) usage rather than user should determine priorities. All of these comments echo and verify the Commission's concern with the matter of meaningful criteria.

19. The Commission is cognizant of the fact that a multiplicity of factors—some of which were noted in the preceding paragraph—bear upon the question of valid assignment criteria. What has not been noted or mentioned however are the inter-relationships between Services; the essentially artificial distinctions that exist between Services; and the confounding effect of these factors on any attempt to establish workable criteria.

20. The present method of administering the Land Mobile Services (of which there are essentially 21) was and is, at least with respect to the private land mobile services, a method of expedience which was developed piecemeal over a period of years in response to needs as identified by organized industry or functional groups. That no integrated relationship of uses aimed at the establishment of proper functional continuity toward an efficient and equitable management of the spectrum has resulted from the present method is, we believe, apparent. The absence of system moreover, has too often meant that the Com-

mission's allocation decisions were little more than the resulting vector produced by conflicting Services and uses.

21. Many of the comments that were addressed to the notions of criteria and sharing recognize that a system must be developed which looks to the use rather than the user of the radio facilities applied for and/or licensed. Implicit in these comments is the notion that the use specified should not be tied to, or modified or compromised by an artificial Service use constraint that was generated for administrative or regulatory convenience and that has outlived its purposefulness. We look therefore to uses as being the keystone of the ultimate system being devised; and a reasonable categorization of uses premised on societal priorities. Unfortunately for both users and the Commission there is no current single repository of information from which data might be drawn. This is not to say however that certain criteria—some of which are admittedly rule-of-thumb—do not exist currently and/or are not worthy or capable of being incorporated into the system we are initiating in Chicago. Thus, geographic or mileage separations, for example, are the simplest example that sharing is both feasible and possible. Similarly, as a function of station separations, antenna heights and effective radiated powers (ERP) parameters, to mention just two, are useful, effective, and available means or tools for rendering sharing possible. It should be noted in this connection that homogeneity or lack of it, between users in this type of sharing arrangement, while a consideration, is not necessarily of critical import.

22. Frequency sharing has been and will continue to be the cornerstone of the administrative methodology by which the Land Mobile Radio Services are governed. The necessary concomitants to this basic sharing precept, notably that licensees will be required to cooperate in the use of frequencies; and that licenses will be granted on a nonexclusive basis; and that the use of a given frequency may be restricted to a geographic area and/or to a specified power; or that other restrictions may be imposed, remain as essential provisions of the Commission's current rules and are not changed by this proceeding. Similarly, no changes in eligibility governing entry to the various Land Mobile Services are being ordered (see paragraph 23 infra).

FREQUENCY COORDINATION

23. For many years frequency coordinators have performed a most valuable and commendable service to both users and the Commission. Frequency advisory committees have spent countless hours preparing recommendations for specific frequencies which in their opinion would result in the least amount of interference to existing stations in a particular area. They have done this at considerable expense; and with considerable success despite inadequate data with which to work. Three new factors now make it possible for the Commission to resume its responsibility of making frequency assignments. They are: (1) use of the new FCC Form 425, which will provide more and better technical information; (2) a monitoring capability; and (3) a computer which will enable us, for the first time, to consider a variety of technical factors, including noise levels, intermodulation, and moni-

toring data in the frequency assignment process. The requirement therefore that a frequency recommendation be received from a frequency coordinating committee before a license may issue appears to be no longer necessary. However, in the interest of making an orderly transition to the new system, we will continue to require coordination at least until August 31, 1973. In so doing both we and the frequency coordinators may interface and compare assignments generated through the mathematical models of our frequency assignment programs with those recommendations of the coordinator whose experience with and knowledge of conditions in the industry or group he represents may be unique. There will, therefore, be a period of time within which parallel frequency selection systems will be employed. During this period of time, we will be able to verify the efficacy of the frequency assignment methodology that has been devised. In the unlikely event that the system does not function as well as we anticipate, we retain the option of requiring coordination beyond the August 31, 1973, date noted above. Assuming, however, that model and program de-bugging may be realized long before August 31, coordinators will, by the end of August, be relieved of the onerous burden that they have, in the past, borne so well. We are hopeful, however, that these coordinators and user organizations will continue to act as liaison between the Commission and user groups. The Chicago Regional Office has a liaison group which will work closely with user groups so that cognizance can be taken of existing master plans, mutual agreements, geographical assignment plans and types of uses on particular frequencies.

24. It is our expectation that an orderly transition from the present methods of allocating frequencies to the establishment of a new system of frequency management will prove to be indispensable to the achievement of our overall goal of optimum utilization of the radio spectrum. As we emphasized in our Notice of Proposed Rule Making, our ultimate goal of use-optimization, and the development of a system to achieve that objective, cannot realistically be implemented immediately. The transition must be effected over a reasonable period of time, taking into account the accumulation of data and administrative experience. This program is, of course, an innovative experiment and test in improved regulation and, for that reason, we intend to monitor closely the early returns from our Chicago office before we commit ourselves to its expansion on a nation-wide basis. We hope to gain valuable experience from our early and continuing observation of the effectiveness of the project, which should be of considerable benefit in future planning. Accordingly, before mandatory inter-service frequency sharing is instituted, and sometime before September 1, 1973, when we expect the full transition to take effect, we intend to review the current status and progress of the Chicago project and take advantage of that experience in formulating the next step in our goal of improved administration of the Land Mobile Radio Services. We are, after all, feeling our way in this area and recognize that adjustments may become necessary as our experience grows. A continuing review of the progress of the program will best serve the public interest by helping us avoid the problems, difficulties and need for adjustment we might otherwise not see.

ELIGIBILITY

25. Eligibility was discussed in the Notice at paragraph 35; and it was proposed to maintain the present basic eligibility criteria and concomitant permissible communications, points of communication, and station limitations sections. The comments generally agreed with this approach as being necessary to insure an orderly transition to expanded frequency sharing. Thus, there will be no change in eligibility, permissible communications, points of communication or station limitations. However, one point of clarification should be made. In the Notice, it was stated that "station limitations for the service in which eligibility was established will continue to govern, even though the frequency assigned is not from the service in which eligibility was established." In the case of mobile relay, we are modifying this position. Mobile relay will only be permitted on frequencies previously available for mobile relay, and, of course, only by licensees previously permitted to use mobile relay.

26. The "assignment limitations" appearing in the frequency tables will remain unchanged. "General reference" limitations will also remain for the present and will not be abolished as proposed in the Notice. To determine which itinerant licensees must file applications with the Regional Office, see the Commission's Public Notice of April 20, 1972 (83922), entitled "Clarification on Requirements For Filing Application Form 425 In The Land Mobile Services."

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICES

27. Our proposal with reference to the Domestic Public Land Mobile Radio Service was essentially to accumulate data and examine the feasibility of sharing between common carrier and private systems. In our First Report and Order in this proceeding, the data accumulation phase of our proposal was ordered, and is currently in progress. The feasibility of sharing, however, remains an imponderable and no decision with respect to it has yet been made. Thus, no inter-service sharing between common carrier and private systems will be authorized, nor will applications for sharing be accepted at this time. Insofar as the licensing of Domestic Public Land Mobile Radio Systems is concerned, they will continue to be licensed from the Commission's Washington Offices. Submission of Forms 425, pursuant to Section 21.14 of the Rules, will of course continue.

LICENSE PERIOD

28. Almost without exception, our proposal to grant licenses for a one-year term was opposed. Few objected to the initial filing for the purpose of establishing a data base, but most felt that yearly renewals did not serve any useful purpose except to update or verify the number of mobile of units that a licensee was using. For the time being, no change is being ordered in license periods.

29. Except for the rule changes noted in the Appendix to this Order, the existing rules in Parts 89, 91 and 93 will, for the present, govern operations in the Chicago Region.

109-021—73——11

FREQUENCY RESERVOIR

30. In addition to the frequencies contained in Categories I and II, there will be a "Frequency Reservoir". This reservoir will contain, initially, a portion of those UHF TV frequencies made available as a result of Commission action taken in Docket No. 18261. In addition to these frequencies, the reservoir will contain nineteen (19) Broadcast Remote Pickup frequencies between 26.11 and 26.47 MHz. A "Reservoir" of frequencies is being established to afford the measure of flexibility deemed necessary in order to respond to unique or unusual conditions that exist or may arise, either on a temporary or continuing basis. In addition, experience may indicate a need for more frequencies in a particular group or groups. Frequencies from within the reservoir may be disposed to satisfaction of these needs. It should be noted, however, that the initial number of frequencies to be lodged in the reservoir while high, will not remain so. Thus, it is anticipated that after the data base has been established and experience with the system has been gained, the reservoir frequencies will be committed to those groups or areas where they will do the most good.

AREA DEFINITION

31. The area to be served by the Chicago Regional Center consists of the states and counties listed in the current Rules. Within the Chicago Region there will be an area described by a radius of approximately 100 miles extending from a point in the approximate center of downtown Chicago which will be identified as the Chicago District. The Appendix enumerates the counties which fall within the District. The two-category allocation and pooling arrangements ordered in this proceeding will be applicable to all persons operating or proposing to operate a land station (i.e., a base station) in the Chicago District.

32. In view of the foregoing and pursuant to the authority contained in Sections 4(i) and 301, 303, 307 and 308 of the Communications Act of 1934, as amended, IT IS ORDERED, that effective January 29, 1973, Parts 2, 74, 89, 91 and 93 of the Commission's Rules ARE AMENDED in the manner set forth in the Appendix.

Authority: Secs. 4, 301, 303, 307, 308, 48 Stat., as amended, 1066, 1081, 1082, 1083, 1084; 47 U.S.C. 154, 301, 303, 307, 308.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Parts 2, 74, 89, 91 and 93 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 2.102(b), new subparagraph (9) is added to read as follows:

§ 2.102 Assignment of frequencies.

* * * * * * *

(b) * * *

(9) Assignments made pursuant to the Land Mobile Spectrum Management program in the Chicago Region.

2. A new Section 74.405 is added to read as follows:

§ 74.405 Special provisions relating to Land Mobile Spectrum Management Program in Chicago region.

(a) The licensing policies, general operating requirements, equipment, technical, and other operating requirements of this subpart will govern for all licensees and applicants for Remote Pickup Broadcast Station who must file on FCC Form 425 in the Chicago region. Limitations for the Service in which licensee eligibility is established will govern the use of a station even though the frequency assigned may not be from the Service in which eligibility was established; except in the case of mobile relay stations which will only be permitted on frequencies previously available for mobile relay use.

(b) The table below reflects the basic frequency assignment methodology for use in the Chicago Region. Category I consists of the Police and Fire Radio Services and their present frequencies. Category II consists of other Radio Services and their frequencies:

CATEGORY I

Police Radio Service
Fire Radio

CATEGORY II

Group A—
Forestry-Conservation Radio Service
Highway Maintenance Radio Service
Local Government Radio Service
Special Emergency Radio Service
Group B—
Power Radio Service
Telephone Maintenance Radio Service
Railroad Radio Service
Group C—
Petroleum Radio Service
Forest Products Radio Service
Manufacturers Radio Service
Special Industrial Radio Service
Motor Carrier Radio Service
Automobile Emergency Radio Service
Business Radio Service
Taxicab Radio Service
Motion Picture Radio Service
Relay Press Radio Service
Remote Pickup Broadcast Stations
Group D—Domestic Public Land Mobile Radio Service [1]
Group E—Citizens Radio Service (Class A)

(c) Frequencies in Category I are available only to those who establish eligibility in that Category. Frequencies in Category II are available to persons who establish eligibility in Category II; and are also available to Category I eligibles on a secondary basis.

(d) To the extent practicable, frequencies from the Service within which an applicant has established eligibility will be assigned to that applicant. If no suitable frequency is available, then a search will be made of frequencies of other Services in the same Group as the applicant. Access to the frequencies of a different Group will be permitted only on a case-by-case basis and only when no suitable frequency is available in the Group in which eligibility is established.

(e) Where services which presently share frequencies are in different categories or groups, the shared frequencies will only be available to the lower priority category or group.

(f) The Chicago Land Mobile Spectrum Management District consists of the following counties in the states noted:

[1] These frequencies will not be shared with private systems in the Chicago Region at this time.

Illinois

1. Boone
2. Bureau
3. Cook
4. De Kalb
5. Du Page
6. Ford
7. Grundy
8. Iroquois
9. Kane
10. Kankakee
11. Kendall
12. Lake
13. La Salle
14. Lee
15. Livingston
16. McHenry
17. Ogle
18. Putnam
19. Will
20. Winnebago

Indiana

1. Benton
2. Carroll
3. Cass
4. Elkhart
5. Fulton
6. Jasper
7. Kosciusko
8. Lake
9. La Porte
10. Marshall
11. Newton
12. Porter
13. Pulaski
14. St. Joseph
15. Starke
16. White

Michigan

1. Allegan
2. Berrien
3. Cass
4. Van Buren

Wisconsin

1. Jefferson
2. Kenosha
3. Milwaukee
4. Racine
5. Rock
6. Walworth
7. Waukesha

3. A new Section 89.81 is added to read as follows:

§ 89.81 Special provisions relating to Land Mobile Spectrum Management Program in Chicago region.

(a) The eligibility, permissible communications, points of communications, general reference and assignment limitations reflected in the various Subparts of this Part will also govern in the Chicago Region. Station limitations for the Service in which licensee eligibility is established will govern the use of a station even though the frequency assigned may not be from the Service in which eligibility was established; except in the case of mobile relay stations which will only be permitted on frequencies previously available for mobile relay use.

(b) The table below reflects the basic frequency assignment methodology for use in the Chicago Region. Category I consists of the Police and Fire Radio Services and their present frequencies. Category II consists of other Radio Services and their frequencies:

CATEGORY I

Police Radio Service
Fire Radio

CATEGORY II

Group A—
- Forestry-Conservation Radio Service
- Highway Maintenance Radio Service
- Local Government Radio Service
- Special Emergency Radio Service

Group B—
- Power Radio Service
- Telephone Maintenance Radio Service
- Railroad Radio Service

Group C—
- Petroleum Radio Service
- Forest Products Radio Service
- Manufacturers Radio Service
- Special Industrial Radio Service
- Motor Carrier Radio Service
- Automobile Emergency Radio Service
- Business Radio Service
- Taxicab Radio Service
- Motion Picture Radio Service
- Relay Press Radio Service
- Remote Pickup Broadcast Stations

Group D—Domestic Public Land Mobile Radio Service[1]

[1] These frequencies will not be shared with private systems in the Chicago Region at this time.

Group E—Citizens Radio Service (Class A)

(c) Frequencies in Category I are available only to those who establish eligibility in that Category. Frequencies in Category II are available to persons who establish eligibility in Category II; and are also available to Category I eligibles on a secondary basis.

(d) To the extent practicable, frequencies from the Service within which an applicant has established eligibility will be assigned to that applicant. If no suitable frequency is available, then a search will be made of frequencies of other Services in the same Group as the applicant. Access to the frequencies of a different Group will be permitted only on a case-by-case basis and only when no suitable frequency is available in the Group in which eligibility is established.

(e) Where services which presently share frequencies are in different categories or groups, the shared frequencies will only be available to the lower priority category or group; except for the eleven low band frequencies shared by Police and Local Government which go to Category I. These licensees who presently operate on these frequencies may continue to do so even though the frequencies do not appear in their eligibility pool.

(f) The Chicago Land Mobile Spectrum Management District consists of the following counties in the states noted:

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11. Kendall
12. Lake
13. La Salle
14. Lee
15. Livingston
16. McHenry
17. Ogle
18. Putnam
19. Will
20. Winnebago

Indiana

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2. Carroll
3. Cass
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9. La Porte
10. Marshall
11. Newton
12. Porter
13. Pulaski
14. St. Joseph
15. Starke
16. White

Michigan

1. Allegan
2. Berrien
3. Cass
4. Van Buren

Wisconsin

1. Jefferson
2. Kenosha
3. Milwaukee
4. Racine
5. Rock
6. Walworth
7. Waukesha

(g) Frequency coordination is required in the Chicago Region. However, after August 31, 1973, frequency coordination will not be required from applicants in the Chicago Land Mobile Spectrum Management District.

4. A new Section 91.67 is added to read as follows:

§ 91.67 Special provisions relating to Land Mobile Spectrum Management Program in Chicago region.

(a) The eligibility, permissible communications, points of communications, general reference and assignment limitations reflected in the various Subparts of this Part will also govern in the Chicago Region. Station limitations for the Service in which licensee eligibility is established will govern the use of a station even though the frequency assigned may not be from the Service in which eligibility was established; except in the case of mobile relay stations which will only be permitted on frequencies previously available for mobile relay use.

(b) The table below reflects the basic frequency assignment methodology for use in the Chicago Region. Category I consists of the Police and Fire Radio Services and their present frequencies. Category II consists of other Radio Services and their frequencies:

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(c) Frequencies in Category I are available only to those who establish eligibility in that Category. Frequencies in Category II are available to persons who establish eligibility in Category II; and are also available to Category I eligibles on a secondary basis.

(d) To the extent practicable, frequencies from the Service within which an applicant has established eligibility will be assigned to that applicant. If no suitable frequency is available, then a search will be made of frequencies of other Services in the same Group as the applicant. Access to the frequencies of a different Group will be permitted only on a case-by-case basis and only when no suitable frequency is available in the Group in which eligibility is established.

(e) Where services which presently share frequencies are in different categories or groups, the shared frequencies will only be available to the lower priority category or group; except for the eleven low band frequencies shared by Police and Local Government which go to Category I. These licensees who presently operate on these frequencies may continue to do so even through the frequencies do not appear in their eligibility pool.

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15. Livingston
16. McHenry
17. Ogle
18. Putnam
19. Will
20. Winnebago

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3. Cass
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10. Marshall
11. Newton
12. Porter
13. Pulaski
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7. Waukesha

[1] These frequencies will not be shared with private systems in the Chicago Region at this time.

(g) Frequency coordination is required in the Chicago Region. However, after August 31, 1973, frequency coordination will not be required from applicants in the Chicago Land Mobile Spectrum Management District.

3. A new Section 93.67 is added to read as follows:

§ 93.67 Special provisions relating to Land Mobile Spectrum Management Program in Chicago region.

(a) The eligibility, permissible communications, points of communications, general reference and assignment limitations reflected in the various Subparts of this Part will also govern in the Chicago Region. Station limitations for the Service in which licensee eligibilty is established will govern the use of a station even though the frequency assigned may not be from the Service in which eligibility was established; except in the case of mobile relay stations which will only be permitted on frequencies previously available for mobile relay use.

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Group E—Citizens Radio Service (Class A)

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(e) Where services which presently share frequencies are in different categories or groups, the shared frequencies will only be available to the lower priority category or group; except for the eleven low band frequencies shared by Police and Local Government which go to Category I. These licensees who presently operate on these frequencies may continue to do so even though the frequencies do not appear in their eligibility pool.

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(g) Frequency coordination is required in the Chicago Region. However, after August 31, 1973, frequency coordination will not be required from applicants in the Chicago Land Mobile Spectrum Management District.

F.C.C. 72R-372

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
STAR STATIONS OF INDIANA, INC.	Docket No. 19122
For Renewal of License of WIFE and WIFE-FM, Indianapolis, Ind.	File Nos. BR-1144, BRH-1276
INDIANAPOLIS BROADCASTING, INC.	Docket No. 19123
For Construction Permit for a Standard Broadcast Station, Indianapolis, Ind. et al.	File No. BP-18706 Docket Nos. 19124 and 19125

MEMORANDUM OPINION AND ORDER

(Adopted December 11, 1972; Released December 15, 1972)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER DISSENTING.

1. This proceeding involves the mutually exclusive applications of Star Stations of Indiana, Inc. (Star) for renewal of license for Stations WIFE and WIFE-FM, Indianapolis, Indiana, and the competing application of Indianapolis Broadcasting, Inc. (Indianapolis) for a construction permit for a standard broadcast station on the same frequency in Indianapolis, Indiana. The Review Board recently added a Rule 1.514 and/or 1.65 and misrepresentation issues directed against Indianapolis by Memorandum Opinion and Order, FCC 72R-114, —— FCC 2d ——, released April 21, 1972. Presently before the Review Board is a petition to enlarge issues filed June 20, 1972, by Star[1] requesting the addition of issues to determine whether Indianapolis:

(a) Improperly attempted to influence or compromise Commission counsel in this proceeding for the purpose of obtaining preferential treatment herein;

(b) Undermined the independence and/or impartiality of action of Commission counsel herein, thereby adversely affecting the confidence of the public in the integrity of the Commission in its conduct of this proceeding, and thereby abused or attempted to abuse the Commission's processes; or

(c) Violated Section 201(f) of Title 18 of the United States Code by offering to Commission counsel an offer of employment for or because of any official act performed by such counsel.

(d) To determine, in light of the evidence adduced pursuant to issues (a), (b), and (c), whether Indianapolis Broadcasting, Inc., possesses the requisite basic and/or comparative qualifications to be a Commission licensee.

[1] Also before the Review Board are the following related pleadings: (a) opposition, filed June 30, 1972, by Indianapolis; (b) Broadcast Bureau's opposition, filed July 6, 1972; and (c) reply, filed July 18, 1972, by Star.

2. In support of its requested issues, Star alleges that at a deposition proceeding held in Indianapolis on June 5, 1972,[2] during a break in the formal proceedings, Mr. Murray Feiwell, local counsel to, as well as an officer, director and 5% stockholder of, Indianapolis, offered Broadcast Bureau's counsel a job in Mr. Feiwell's law firm. According to Don W. Burden and Robert D. Kiley,[3] principals of Star, who were present at the time the alleged conversation between Feiwell and Bureau counsel took place, the following dialogue was overheard by them:

FEIWELL. Where are you from Joe?
CHACHKIN. New York.
FEIWELL. How long have you been at the FCC?
CHACHKIN. Since 1961.
FEIWELL. Are you going to make a career of it?
CHACHKIN. Well after you have been there as long as I have and at my age I may.
FEIWELL. The reason I ask is because we are looking for a good trial attorney.
CHACHKIN. Is that right.
FEIWELL. They are hard to find and we are looking for a good one.
CHACHKIN. Is that right.
FEIWELL. You know, they are hard to find and we are looking for a good one. Would you be interested in joining our firm as a trial attorney?
CHACHKIN. Well I don't know, I would have to think about that.

3. Thereafter, Star requested from the Chief, Hearing Division, Broadcast Bureau, a statement of the facts and circumstances surrounding the conversation between Bureau counsel and Feiwell. Bureau counsel submitted a statement [4] in which he corroborates Burden's and Kiley's recollections of the conversation; however, the statement further reveals that a second conversation took place between Bureau counsel and Feiwell in which Bureau counsel told Feiwell that "even if I were interested in joining his firm, I could not and would not discuss that subject during the pendency of the case." Star argues that the above conversations reflect adversely on Mr. Feiwell and Indianapolis' character. Just as Commission personnel are prohibited from soliciting employment from parties in proceedings in which they are involved,[5] Star maintains that it is equally improper for a party to a proceeding, like Feiwell, "to have made the offer in the midst of a critical juncture in the hearing . . ." Furthermore, Star asserts, Feiwell's offer may have violated Section 201(f) of Title 18 of the United States Code, which provides, that:

> Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official. * * * Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

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[2] The deposition was held to explore allegations related to misrepresentation and the Rule 1.514 and 1.65 issues directed against Indianapolis.
[3] Sworn affidavits of both Burden and Kiley are submitted with Star's petition.
[4] The statement is attached to petitioner's pleading.
[5] Star cites Section 19.735–202 of the Commission's Rules which prohibits any employee of the Commission from soliciting or accepting "any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from a person who:
(2) conducts operations or activities that are regulated by the Commission; or
(3) has interests that may be substantially affected by the performance or nonperformance of his (the employee's) official duty; or
(4) is in any way attempting to affect the employee's official action at the Commission."

4. According to Star, the offer was an item of value within the context of the statute and raises the question "whether the offer of present or future employment was made 'for or because of any official act performed or to be performed by' Commission counsel".[6] Star also contends that the offer abuses Commission process by compromising the appearance of "complete independence or impartiality of action" in contravention of President Lyndon B. Johnson's Executive Order No. 11222,[7] and in the language of the Order, adversely affected "the confidence of the public in the integrity of the Government." Star further argues that there is no dispute the conversation took place, and that an inquiry is necessary to determine "the intent, motive, and underlying purpose which gave rise to the offer." With respect to the timeliness of the petition, Star asserts that the pleading is being filed within 15 days from the date the employment offer was made by Feiwell. The pleading would have been filed sooner, but was delayed because of the time involved in securing Bureau counsel's statement, as well as the affidavits of Burden and Kiley. According to Star, good cause has been shown for acceptance and consideration of its pleading.

5. In opposition, Indianapolis argues that Star's petition is procedurally defective. In a letter sent to the Chief of the Broadcast Bureau on June 9, 1972, Star transmitted Burden's and Kiley's *unsworn* statements which set forth their recollection of the conversation between Feiwell and Bureau counsel. However, after receiving a response, *viz.* Bureau counsel's affidavit (see para. 2, *supra*), Indianapolis argues that Star then took the sworn affidavits of Burden and Kiley on June 19, 1972, thereby giving them both an opportunity to review Bureau counsel's statement, and to modify their own initial statements. According to Indianapolis, after reviewing Chachkin's statement, Burden and Kiley altered their initial recollections of the conversations as evidenced by a comparison of their "Resume of Conversation". In the letter to the Chief of the Broadcast Bureau their recollection is stated, as follows:

> At this point in the conversation, as Mr. Burden and Mr. Kiley left the room, *Mr. Feiwell got up from his seat at the front of the room and moved back to where Mr. Chachkin was sitting at the rear of the room.* (Emphasis supplied by Indianapolis.)

However, on page 2 of Burden's subsequent affidavit, Burden stated, "*it appeared to me* as we left that Mr. Feiwell had moved from the front of the room to the back where Mr. Chachkin was seated." (Indianapolis' emphasis.) Thus, Indianapolis asserts that this "tailoring" of affidavits by Burden and Kiley to conform with Bureau counsel's

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[6] In this connection, Star relies on *U.S.* v. *Irwin*, 354 F. 2d 192 (C.A. 2, 1965), cert. denied, 383 U.S. 967, and cites an excerpt of that opinion reading, as follows: "the act prohibited knowingly and purposefully and not through accident, misunderstanding, inadvertence or other innocent reasons." The *Irwin* case also makes clear, Star asserts, that it is illegal to make the offer even if the person making it has no "specific intent" to act illegally.

[7] Star cites "Executive Order No. 11222, *Standards of Ethical Conduct for Government Officers and Employees*," May 8, 1965, 30 F.R. 6469, which requires government employees to avoid any action which might result in, or create the appearance of—

(2) giving preferential treatment to any organization or person;
(4) losing complete independence or impartiality of action;
(6) affecting adversely the confidence of the public in the integrity of the government.

These standards are also incorporated into the Commission's Rules, Section 19.735-202(c). See note 5, *supra*.

affidavits be based upon personal knowledge. With respect to the offer itself, Indianapolis argues that: the offer was made by Feiwell in a joking manner to Bureau counsel;[8] Feiwell did not intend to make a job offer; Bureau counsel did not consider it an offer; and, the conversation lacked the specificity required of a valid offer under the law. Indianapolis also maintains that (a) Section 19.735–202 of the Commission's Rules and Executive Order No. 11222 apply to the conduct of government employees and not third parties, and (b) as for a possible violation of Section 201(f) of Title 18 of the United States Code, no one would prosecute Feiwell because the offer was not serious. Furthermore, Indianapolis asserts that *U.S.* v. *Irwin*, *supra*, involved an actual bribe of $400 to an Internal Revenue agent and the court held that the Government must prove that the accused committed, "the act prohibited knowingly and purposely and not through accident, misunderstanding, inadvertence or other reasons." Therefore, Indianapolis argues, the case is inapplicable to the present matter, and that Star has not shown that any Commission Rule has been violated.

6. In opposing the requested issues, the Broadcast Bureau asserts that: (1) it is natural for lawyers during recesses during Commission proceedings to discuss fellow attorneys' "practices, workloads, sizes of firms, backgrounds, etc."; (2) if the offer was serious it would not have been made in front of principals of the opposing applicant; (3) the salary of $150,000 proposed during the conversation suggests that the offer was not made seriously; and (4) Feiwell, as an attorney, is doubtlessly aware of the impropriety of making an employment offer to counsel of a party to a pending proceeding.

7. Finally, in reply, Star asserts that the offer apparently was taken seriously by Bureau counsel because he approached Feiwell "*a day and a half later*" after the alleged offer was made to inform him that he could not and would not carry on further discussion concerning employment during the pendency of the case. Certainly this factor plus Bureau counsel's affidavit corroborating Burden's and Kiley's affidavit, Star asserts, warrants addition of the issue.

8. The Board will deny the petition. In our view, the facts and circumstances described above are undisputed in all significant respects, and present only one question, *viz.* whether the spoken words, either standing alone or considered together with the surrounding circumstances of their utterance, constitute an offer of employment to Bureau counsel. If so, there is no doubt of the seriousness of the situation necessitating further inquiry at the hearing in this proceeding. Turning to the spoken words, *per se*, "whether counsel would be *interested* in joining our law firm" (emphasis supplied), basic contract law requires that an offer "must be definite and certain". 17 Am. Jur., *Contracts*, Section 32 (1969). With this basic elementary principle of law in mind, it is evident that this amorphous and vague invitation cannot be deemed to be an offer. Moreover, all of the circumstances surrounding this conversation negate any intent by Feiwell to make such an offer. First, Feiwell, as a lawyer, may reasonably be deemed to know these elementary principles of contract law. Secondly, this is also a

[8] Indianapolis attaches the affidavit of Feiwell to its pleading in which he does not deny that the conversation took place, but denies that any serious offer was made.

reasonable assumption with respect to Bureau counsel. Thirdly, Feiwell, by his affidavit, states that he did not make such an offer, and Bureau counsel, likewise under oath, states that he did not interpret Feiwell's remarks as an offer even though he subsequently admonished Feiwell concerning the stringent necessity with respect to his, Bureau counsel's, conduct. Fourth, all parties agree that Bureau counsel's conduct is without reproach. Finally, we do not believe that a sophisticated lawyer, such as Feiwell, would advance such a proposition to Bureau counsel, in a public place and within earshot of opposing parties. While it is true that "many a serious word is spoken in jest," on the basis of the undisputed facts before us and Star's speculative assertions, no useful purpose would be served by further exploration of these facts at a hearing. In this connection, we note that Star contends only that "a thorough investigation may well determine that there are serious conclusions that can be drawn from these spoken words and circumstances. In our view, this is sheer speculation. Suffice it to say, that we do not look with favor upon this incident which we believe reflects adversely on Feiwell's sense of good taste; however, on the basis of the undisputed facts, we cannot read venality into this chitchat, as Star would have us do.

9. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed June 20, 1972, by Star Stations of Indiana, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–1109

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of TELEMUNDO, INC., MAYAGUEZ, P.R. Request for Emergency Authorization Pursuant to section 309(f) of the Communications Act of 1934, as amended	File No. BPTT–2452

ORDER

(Adopted December 6, 1972; Released December 14, 1972)

BY THE COMMISSION: CHAIRMAN BURCH ABSENT.

1. On November 21, 1972, the Commission released its Order in the above-captioned proceeding, granting to Telemundo, Inc., licensee of television station WKAQ–TV, channel 2, San Juan, Puerto Rico, emergency special temporary authority (STA), pursuant to section 309(f) of the Communications Act of 1934, as amended, to construct and commence immediate operation of a 100-watt UHF television broadcast translator station to serve Mayaguez, Puerto Rico, by rebroadcasting station WKAQ–TV on output channel 22, pending Commission action on Telemundo's application (BPTT–2452) for regular authority to construct and operate a 1,000-watt translator on channel 22 in Mayaguez (FCC 72–1023). The Commission now has before it for consideration a petition for stay, filed November 17, 1972, by Quality Telecasting Corporation, licensee of television station WORA–TV, channel 5, Mayaguez, Puerto Rico, ante-dating the release of the Commission's Order granting Telemundo emergency STA. Simultaneously, Quality Telecasting Corporation filed a petition for reconsideration and for immediate stay of the STA.[1]

2. The Commission, in determining whether a stay is warranted, considers four factors: the likelihood that petitioner will prevail on the merits of its petition for reconsideration; irreparable harm to petitioner; substantial injury to other interested parties; and injury to the public interest. A stay is extraordinary relief and the burden upon one who seeks such relief is a heavy one. *Associated Securities Corp.* v. *Securities and Exchange Commission*, 283 F 2d. 773, U.S.C.A., D.C. Cir., 1960; *West Michigan Telecasters, Inc.* (*W12AP*), 33 FCC 2d 429, released January 24, 1972; *Tele Visual Corporation* (*W70BC*), 34 FCC 2d 292, released March 29, 1972.

3. Petitioner herein has not addressed itself to any basis for the extraordinary relief which it seeks. It has made no effort to show irreparable harm to itself, substantial injury to others, injury to the

[1] On November 24, 1972, Telemundo filed an opposition to the petitions. On November 28, 1972, petitioner filed a reply to Telemundo's opposition to the request for stay. Since such a reply is specifically prohibited by section 1.45(d) of the rules, it will not be considered.

public interest, or the likelihood of its success on the merits of its petition for reconsideration. It alleges, however, that the Commission did not, and could not, make the statutory finding that extraordinary circumstances requiring emergency operations in the public interest existed and that delay in the institution of such emergency operations would seriously prejudice the public interest. In fact, the Commission did make such a finding, based upon the imminent loss of television service to a community of more than 86,000 persons, but petitioner, at the time of filing its request for stay, did not have the Commission's order available to it and was not, therefore, in a position to have these facts. We find that petitioner has not sustained its burden of persuasion in seeking a stay and we will, therefore, deny the petition for stay. In reaching this decision, we reserve judgment on the petition for reconsideration which will be considered on its merits as soon as practicable.

Accordingly, IT IS ORDERED, That the petition for stay filed herein by Quality Telecasting Corporation, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–1143

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TELEVENTS OF SAN JOAQUIN VALLEY, INC., LOS BANOS, CALIF. For Certificate of Compliance	CAC–717 CA462

MEMORANDUM OPINION AND ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT

1. On June 21, 1972, Televents of San Joaquin Valley, Inc., filed an application (CAC–717) for certificate of compliance for a new cable television system at Los Banos, California, a community located outside all television markets. Televents proposes to carry the following California television broadcast signals:

KTVU (Ind.), Oakland
KQED (Educ.), San Francisco
KSBW–TV (NBC), Salinas
KNTV (ABC), San Jose
KLOC–TV (Ind.), Modesto
KMJ–TV (NBC), Fresno
KFSN–TV (CBS), Fresno
KGSC–TV (CBS), San Jose
KTXL–TV (Ind.), Sacramento
KBHK–TV (Ind.), San Francisco
KJEO (ABC), Fresno
KMST (CBS), Monterey
KAIL (Ind.) Fresno

Televents is entitled to carry these signals pursuant to the grandfathering provisions of Section 76.65 of the Commission's Rules. Televents' application is opposed by: Retlaw Enterprises, Inc., licensee of Television Broadcast Station KJEO, Fresno, California; Tel-America Corporation, licensee of Television Broadcast Station KAIL, Fresno, California; and Pappas Television, Inc., permittee of Television Broadcast Station KMPH, Tulare, California.

2. Retlaw argues that Televents' franchise does not comply with the requirements of Section 76.31 of the Rules (the only specific raised is that the franchise is for 20 years rather than the 15 years called for by our rules) and that any Commission action on Televents' application should be "specifically conditioned upon the system taking the necessary measures to win favorable action upon an amended franchise before the local authorities." Since Televents' franchise was

granted January 18, 1971, its proposal is consistent with the policy which we now follow in dealing with franchises issued before adoption of our present rules where the franchise is in substantial compliance with our rules. Here we find there is substantial compliance sufficient to permit grant of the application until March 31, 1977. E.g., *CATV of Rockford*, FCC 72–1005, —— FCC 2d ——.

3. Tel-America argues in general terms that grant of the application should be conditioned to prohibit importation of distant signals in order to avoid audience fragmentation in view of the fact that it has been losing money. Since, however, KAIL does not provide even a predicted Grade B contour over Los Banos, it does not seem the requested relief is appropriate. See Par. 112, *Cable Television Report and Order*, 36 FCC 2d 143, 186.

4. Pappas asks that Televents be certificated only upon condition that it carry KMPH. Pappas concedes that KMPH does not place a predicted B contour over Los Banos, but argues that it places an actual B contour over Los Banos, and should therefore be carried. We must reject this argument since Pappas has not supplied data to establish that Los Banos is, in fact, within its actual Grade B contour. Compare *Bluefield Television Cable*, 10 FCC 2d 731, 732.

In view of the foregoing, the Commission finds that grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Partial Opposition of Retlaw Enterprises, Inc." filed August 7, 1972, directed against CAC–717, IS DENIED.

IT IS FURTHER ORDERED, That the "Tel-America Corporation Objection to Application for Certificate of Compliance" filed August 7, 1972, directed against CAC–717, IS DENIED.

IT IS FURTHER ORDERED, That the "Objection to Application for Certificate of Compliance" filed by Pappas Television, Inc., on September 1, 1972, directed against CAC–717, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–717) for Certificate of Compliance IS GRANTED and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

38 F.C.C. 2d

F.C.C. 72R-376

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re application of TEX-ARK TV CO., INC. (KTXK-TV). TEXARKANA, TEX. For Extension of Construction Permit	Docket No. 19612 File No. BMPCT-7416

APPEARANCES

Connor W. Patman, on behalf of Tex-Ark TV Company, Inc.; and *Philip V. Permut*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted December 12, 1972; Released December 15, 1972)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. The Board has before it for consideration the above-captioned application for additional time to construct UHF television broadcast Station KTXK, Channel 17, Texarkana, Texas. The permit to construct said station was granted on February 10, 1971, and required that construction be commenced by April 10, 1971, and that such construction be completed by August 10, 1972. Additionally, the permit contained the following proscription: "This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by a cause not under the control of the permittee. See Section 1.598 of the Commission's Rules." [1]

2. Despite the foregoing admonishment, on July 19, 1972, the permittee filed the subject application seeking an extension of time and stating that equipment had not even been ordered and that no construction whatsoever had commenced. As reasons for its failure to construct, the permittee stated, in substance, that it had been "unable, to date, to secure suitable programming for the proposed station as all three networks are taken by existing stations that serve the area": that a "CATV franchise was granted in the early part of 1972 and must be in operation within one year"; that "it has become necessary to reconsider the economic feasibility of establishing a UHF

[1] Section 1.598(a) provides for the construction of a television station within 18 months of a grant of a permit. The Commission's authority to promulgate this rule derives from Section 319(b) of the Communications Act of 1934, as amended, which states:

Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.

station in the Texarkana area"; that "only about 26.8% of the TV sets located within applicant's area are capable of receiving UHF transmission"; that "unless either the number of sets increase in the area, or unless the CATV secures a distribution wide enough to make it feasible for applicant's UHF station to be placed upon the CATV band, that again the station is not economically feasible"; and that the applicant feels "that the feasibility of the UHF station, as affected by the CATV system to be installed, must be determined after the installation of that system." Finally, the applicant requested an extension "subject to applicant making a request for additional time if the feasibility study cannot be completed within such extension."

3. By letter of August 3, 1972, the Chief, Broadcast Bureau, acting pursuant to delegated authority,[2] dismissed the above-captioned application, cancelled the construction permit, and deleted the station's call letters, stating that "it does not appear that you have exercised due diligence in the prosecution of construction or that construction of station KTXK has been prevented by causes not under your control within the meaning of section 319(b) of the Communications Act of 1934, as amended." At the same time, the permittee was advised that it could request reinstatement and a hearing within 30 days. Such request was submitted by the permittee by letter dated August 15, 1972, in which it repeated, in substance, some of the arguments set forth in its extension application. In an Order, FCC 72–919, released October 18, 1972, the Commission reinstated the construction permit, call letters and subject extension application. However, the Commission determined that since it was unable to find that a grant of said application, without a hearing, would serve the public interest, it was designating said application for oral argument before the Review Board. The following issue was specified:

> To determine whether the reasons advanced by the permittee in support of its request for an extension of its completion date, constitute a showing that failure to complete construction was due to causes not under the control of the permittee, or constitute a showing of other matters sufficient to warrant a further extension of time within the meaning of section 319(b) of the Communications Act of 1934 and section 1.534(a) of the Commission's rules.

4. By Order, FCC 72R–321, released November 10, 1972, oral argument was set by the Board for November 28, 1972 and, at the request of the permittee, was postponed until December 5, 1972. Appearances were filed by the Bureau and the permittee who also submitted a "Brief of Law." In said brief, the permittee referred to the above-captioned application and, in effect, incorporated by reference the supporting grounds advanced by it in said application. As scheduled, the oral argument was heard on December 5, 1972, by a panel of the Review Board.

5. During the course of his presentation, counsel for the permittee (also its 99.8% stockholder) advanced, in substance, the arguments and statements previously submitted, as set forth above. He referred to the three VHF stations serving Texarkana, Texas as "Louisiana" stations providing "Louisiana news" and felt that "at the proper time there can be another station in there, a UHF station that can really

[2] Section 0.281(z) of the Commission's Rules.

meet the local needs." He stated that the problem of UHF stations is "that they just don't make money, it looks like, to start with. I investigated this really more after I made the application than I did prior to making the application"; that the primary problem was "programming" and that the permittee had been unable to obtain even "overflow" network programs; that it had "counted partly on CATV" to provide a given audience for the proposed UHF station;[3] that this support was adversely affected by the Commission's requirement for program originations by CATV systems; and that the matter had been discussed with the permittee's banker and that "it was also his consideration that there should be a delay on my part before we went into the vast investment that it has become with this UHF to see what would be the effects on UHF of CATV." In his concluding remarks, counsel stated that "there is a need for the station, and I am hoping that it can come along. I will be perfectly frank and honest with the Board, I am not saying that if you give me this extension, I will kind of go out there and put this thing out there tomorrow or within the next six months. I feel that I need the time to make a determination of whether or not it is feasible."

6. In his presentation, Bureau counsel pointed out that, in view of the economic factors involved, among others, the Commission had, by rule, lengthened the time within which UHF stations must be constructed from eight months to 18 months; and that the latest figures show that there is a 75% UHF set penetration for Texarkana. He urged that the permittee's decision to delay construction was an independent economic judgment; that the reasons advanced by the permittee were insufficient for a favorable resolution of the issue framed by the Commission; that Texarkana, Texas, is presently served by three VHF television stations; and that the application should be denied.

7. An application for extension of time to complete construction of a broadcast station may be granted, consistent with the public interest in the expeditious inauguration of service, upon one of two grounds: the applicant must demonstrate either that construction was delayed by unforeseen circumstances beyond his control, or that other matters outweigh the harm caused by delay in construction. *Northeast TV Cablevision Corp.* (*WNEC*), 21 FCC 2d 442, 18 RR 2d 333 (1970); *Onondaga UHF-TV, Inc.* (*WONH*), FCC 70-100, 18 RR 2d 270 (1970). Whether or not delay is caused by circumstances beyond an applicant's control hinges upon the factual situation presented; however, a permittee who postpones construction solely because of economic considerations is deemed to have exercised his independent business judgment, a circumstance heretofore held by the Commission to be within his control. *Northeast TV Cablevision Corp., supra.* The alternate basis for grant of a request for extension of time—"other matters"—may serve to justify favorable action on a request. Thus, the Commission has given favorable weight to such factors, among others, as a *firm* commitment to build made by the permittee or by his proposed assignee and the fact that a grant of the extension would ex-

[3] Permittee's counsel indicated that a CATV system had been granted "six years ago, they started to put it on the air, and then you made the freeze that came along to stop it."

pedite the institution of UHF service. *Onondaga UHF–TV, Inc. (WONH), supra; Radio Longview, Inc. (KHER)*, 19 FCC 2d 966, 16 RR 2d 1026 (1969); *The Jackson Television Corporation*, 24 FCC 2d 439, 19 RR 2d 758 (1970).

8. In its *Report and Order* amending Section 1.598 of its Rules, 23 FCC 2d 274, 19 RR 2d 1578 (1970), so as to extend the period of construction of television stations from eight months to 18 months, the Commission quoted from its opinion in the *Northeast TV* case that "a permittee who postpones construction because of economic considerations alone exercises his independent business judgment, and thus his failure to construct is attributable to circumstances within his control." The Commission also made clear that "henceforth only the closest adherence to Section 319 of the Act will be countenanced" and that "failure to construct promptly and extension of a CP may be detrimental to the listening public and other prospective applicants."

9. While we understand and sympathize with the position of the applicant as portrayed by its counsel at the oral argument, it is clear that, consistent with the policies enunciated by the Commission, and on the basis of the record herein, the subject application must be denied. Since the grant of applicant's construction permit on February 10, 1971, no equipment has been ordered, no construction has been started, and it has stated candidly that it is not prepared to commit itself to a starting date. All of the reasons advanced by the applicant for these failures have their bases in economic considerations and, as we have seen, the Commission has held repeatedly that postponement of construction because of economic considerations constitutes an exercise of an independent business judgment, a matter solely within the control of the permittee. The operation of the proposed CATV system in Texarkana was anticipated by the permittee at the time it filed its application for a construction permit on August 15, 1969, (see note 3, *supra*). It had notice of the potential for program origination by such systems as a result of the Commission's *Notice of Proposed Rulemaking*, 15 FCC 2d 417, adopted December 12, 1968, wherein the Commission stated its "tentative conclusion that, for now and in general, CATV program origination is in the public interest," *id.*, at 421; and sought comments on a proposal "to condition the carriage of television broadcast signals (local or distant) upon a requirement that the CATV system also operate to a significant extent as a local outlet by originating." *Id.*, at 422. Further, and shortly after it had filed its application, the Commission, on October 24, 1969, adopted a rule providing that "no CATV system having 3500 or more subscribers shall carry the signal of any television broadcast station unless the system also operates to a significant extent as a local outlet by cable casting and has available facilities for local production and presentation of programs other than automated services." 47 CFR § 74.1111 (a).[4] Thus, when the permittee received its construction permit on February 10, 1971, it had been on notice for a substantial period of time of the Commission's views concerning, and requirements for, CATV program originations.

[4] Although not of significance here, it may be noted that the regulation has been revised and now appears at 47 CFR § 76.201(a).

10. In light of all of the above, we find that the reasons advanced by the permittee in support of its request for extension of its completion date do *not* constitute a showing that failure to complete construction was due to causes not under the permittee's control; and that said reasons do *not* constitute a showing of other matters sufficient to warrant a further extension of time within the meaning of Section 319(b) of the Act and Section 1.534(a) of the Commission's Rules. Thus, the Board is unable to find that the public interest would be served by a grant of the above-captioned application.

11. Accordingly, IT IS ORDERED, That the application filed by Tex-Ark TV Company, Inc., for extension of time to construct Station KTXK–TV, Texarkana, Texas (File No. BMPCT–7416) IS DENIED, and that its television construction permit and call letters ARE CANCELLED.

JOSEPH N. NELSON,
Member, Review Board,
Federal Communications Commission.

F.C.C. 72-1130

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
UNITED TELEVISION, INC. (KMSP-TV),
MINNEAPOLIS, MINN.
Request for Deletion of Condition

ORDER

(Adopted December 13, 1972; Released December 19, 1972)

BY THE COMMISSION:

1. The Commission has under consideration the above-captioned request for deletion of a condition attached to the grant of the application of United Television, Inc., for authority to relocate its tower and antenna. That condition was imposed by the Review Board in its decision in *WTCN Television, Inc.*, 14 FCC 2d 870, adopted October 9, 1968, a proceeding wherein the applications of station WTCN-TV, WCCO-TV, KMSP-TV, KTCA-TV and KTCI-TV, all licensed to Minneapolis-St. Paul, were granted authority to modify existing facilities to specify new tall towers and antenna systems. In its decision the Review Board stated the applications were granted:

> [O]n condition that the antenna structures be made available for use by present and future permittees and licensees of television facilities in the Minneapolis-St. Paul areas who have already made requests or make requests therefor on a fair and equitable basis and on the further condition that within sixty (60) days after release of this Decision the applicants file with the Commission the terms and conditions under which the proposed structure will be made available to such potential users.

2. By letter dated December 17, 1969, the applicants advised the Commission that they proposed to meet the condition by constructing two towers; an east tower and a west tower. The west tower was to be occupied by three commercial television stations, WTCN-TV, WCCO-TV and KSTP-TV.[1] United Television, Inc., owner of the east tower, indicated that space had been offered to the permittees of channels 23 and 29 and that the tower was constructed and planned to accommodate the UHF channels. Since the construction of the east tower, the permit for channel 29 was cancelled on December 20, 1970, and no other application for the channel has been filed. The permittee for channel 23 has determined not to avail itself of space on the east tower but to construct its own tower.

3. United urges that these events have rendered the accommodation of channels 23 and 29 moot; that monies have been expended to con-

[1] The joint tower originally proposed by these stations collapsed. These stations now propose two towers; one to be shared by WCCO-TV and KSTP, and the other to be used by WTCN-TV.

struct a tower of greater capacity which could be utilized by potential users, including four FM licensees in Minneapolis-St. Paul, who are eager to lease space; that these FM licensees will be able to compete on an equal basis among themselves, and with the commonly owned FM stations licensed to WCCO–TV and KSTP–TV which will be located on the west tower; and that the public interest is better served by permitting use of the tower now rather than continuing to reserve the space for stations which may never materialize.

4. The Commission is of the view that United Television, Inc., has shown that the public interest would be served by permitting the east tower to be utilized now rather than reserving the space for some future television station. Accordingly, IT IS ORDERED, That the condition in *WTCN Television, Inc.*, 14 FCC 2d 870, is hereby DELETED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-1076

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of WESTERN UNION TELEGRAPH CO. Proposed revisions to Tariff F.C.C. No. 233 to provide for Computer Word Counting.	Transmittal Nos. 6786, 6799, 6810

MEMORANDUM OPINION AND ORDER

(Adopted November 29, 1972; Released December 12, 1972)

BY THE COMMISSION: COMMISSIONERS BURCH, CHAIRMAN; ROBERT E. LEE, JOHNSON, H. REX LEE, REID, WILEY AND HOOKS.

1. On September 6, 1972 Western Union Telegraph Company (WU) filed revisions to its Tariff F.C.C. No. 233 effective October 6, 1972 [1] to provide for the automatic computer counting of the number of words in messages addressed to overseas destinations filed by its TWX and telex customers in lieu of the existing manual counting methods. Objections were filed thereto by ITT Worldcom, Inc., and RCA Globcom, Inc., on the grounds that the computer's inability to recognize certain disallowed combinations of words or letters and symbols would lead to an undercounting of the number of words per message. In addition to the adverse impact this would have on their revenues, the protestants noted that certain customers might attempt to take advantage of the potential for undercounting, and that such undercounting would contravene existing international treaty obligations which specify with particularity the matters which may be transmitted and which must be counted. In response, Western Union noted that the proposed tariff revisions were directly designed to overcome the potential for undercounting by directing customers to send messages containing material of a designated kind to a special position for manual counting. It also observed that the computer would count far more accurately than could be done manually all but a very small percentage of messages which might contain the disallowed combinations or symbols which the computer could not recognize.

2. In response to these protests and to suggestions made at a meeting with the staff, Western Union revised the tariff changes to include a termination date 120 days after the effective date. Western Union also submitted to the staff a plan to sample on a statistically valid basis the extent to which messages flowing through the computer differed in word count from the results of manual counting. The plan also contemplates screening of the computer counted messages to determine if individual customers are systematically attempting to pass unauthorized material through the computer. Finally, the company agreed to

[1] Subsequently deferred to December 2, 1972.

report to the Commission within 90 days of the institution of the computer word counting on the results of its study.

3. We construe the instant matter to constitute an experimental offering, and to provide the most effective way to determine the extent to which, in actual practice, computer word counting leads to undercounting, or permits the transmission of unauthorized material. We note that all parties agree that for the vast majority of messages the computer will count words far more accurately than can be done by hand, and at a faster rate. Accordingly, we believe the narrowly circumscribed experiment in computer word counting proposed by Western Union should be permitted to become effective, and the protests rejected.

Accordingly, IT IS ORDERED, that the Petitions to Reject or Suspend filed by ITT and RCA on September 26, 1972 and September 25, 1972, respectively, are DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-370

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WPIX, INC. (WPIX), NEW YORK, N.Y. For Renewal of Broadcast License FORUM COMMUNICATIONS, INC., NEW YORK, N.Y. For Construction Permit for New Television Broadcast Station	Docket No. 18711 File No. BRCT-98 Docket No. 18712 File No. BPCT-4249

MEMORANDUM OPINION AND ORDER

(Adopted December 11, 1972; Released December 18, 1972)

BY THE REVIEW BOARD:

1. The principal question presented is whether a Rule 1.65 issue is warranted by the failure of Forum Communications, Inc. (Forum), to amend its application to disclose an option agreement between Inner City Broadcasting Corp., Inc. (Inner City), and New Broadcasting Co., Inc., for the purchase of FM broadcast Station WLIB-FM, New York, New York.[1]

2. The pertinent facts are these, as revealed by the pleadings before us: On June 26, 1972, the Commission approved the application of Inner City to acquire AM Station WLIB, New York. Although the option agreement to acquire the FM station was filed in connection with Inner City's AM assignment and transfer application of WLIB, Forum did not inform the Commission or other parties in this proceeding that such an option to purchase the FM station was included in the Inner City AM acquisition transfer. Hence, the existence of this option was not revealed in the instant proceeding until the filing of the subject petition by WPIX. Thereafter, Forum filed an appropriate amendment to its application.

3. The significance of the option agreement is indicated by the fact that H. Carl McCall, proposed Urban Affairs Director (a full-time proposed management-level employee), and 0.6% stockholder of Forum and its proposed television station, is also president, director, and general manager of Inner City's AM Station WLIB. According to the facts revealed by the pleadings before us, a Forum principal testified in this proceeding that McCall will disassociate himself from Inner City and WLIB in the event the Commission determines that McCall's interest in both Inner City and Forum is inconsistent with Section 73.636 of the Commission's Rules or the policies underlying such rules. In addition, at a hearing session on December 3, 1971, this latter statement was amplified by Forum's president into a commitment that upon a grant of Forum's application, "Mr. McCall will resign his position . . . as general manager of station WLIB . . .". (Tr. 12342.)

4. The instant petition was filed on July 19, 1972, some eight months after the above described testimony, and for the first time revealed in

[1] The Review Board has before it the following pleadings: (a) motion to enlarge the issues, filed July 19, 1972, by WPIX, Inc. (WPIX); (b) opposition, filed August 2, 1972, by Forum; (c) Broadcast Bureau's comments, filed August 2, 1972; and (d) reply, filed August 14, 1972, by WPIX.

this proceeding the existence of the FM option. Although on the basis of the pleadings before us, there is now confirmation that the substance of McCall's commitments to Forum (para. 3) applies to this FM option agreement, just as it does to AM Station WLIB, we will, nevertheless, add a comparative Rule 1.65 issue against Forum. For it is clear that one of the purposes of Rule 1.65, requiring an applicant to update all information which may be of decisional significance, is to avoid what has occurred here, causing the filing of a multiplicity of pleadings and resulting arguments concerning the applicability of testimony to events which should have been previously reported. Obviously, what has occurred here cannot be deemed conducive either to the orderly administration and dispatch of this complicated and prolonged proceeding, or to the Commission's business since it places an unnecessary burden on our adjudicatory hearing processes.

5. Furthermore, there can be no question that the option agreement should have been reported by Forum under Section 1.65. The option agreement to purchase a broadcast station is an "interest in, or connection with", a broadcast station within the meaning of the Commission's Application Form 301, Section II, page 5, question 19, and the option agreement rendered that portion of the Forum application which sets forth the broadcast interests of Mr. McCall "no longer substantially accurate" within the meaning of Rule 1.65. Forum's claim of insignificance as an excuse for not reporting the option is simply not persuasive. As stated in the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 at 394, 5 RR 2d 1901 at 1908 (1965), "we will consider both common control and less than controlling interests in other broadcast stations . . .". See also, *Lake Erie Broadcasting Company*, 34 FCC 2d 354, 24 RR 2d 64 (1972).

6. The Board does, however, accept Forum's allegation that there was no intention to conceal this option in view of the fact that Forum has kept the Commission informed of other relevant matters concerning Inner City's activities and Mr. McCall's connection therein. In addition, Forum has provided affidavits from appropriate principals denying intention or motive and the failure to amend is an isolated violation in a complicated and protracted hearing. Therefore, the issue will be added on a comparative basis only. *RKO General Inc., (WNAC-TV)*, 34 FCC 2d 265, 24 RR 2d 16 (1972); *Great Southern Broadcasting Co.*, 18 FCC 2d 599, 16 RR 2d 864 (1969); and *Minshall Broadcasting Co., Inc.*, 10 FCC 2d 647, 11 RR 2d 754 (1967).

7. Accordingly, IT IS ORDERED, That the motion to enlarge the issues, filed July 19, 1972, by WPIX, Inc. (WPIX) IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and the issues in this proceeding ARE ENLARGED to include the following issue:

To determine whether Forum Communications, Inc., has failed to comply with Commission Rule 1.65, and if so, the effect thereof upon the applicant's comparative qualifications to be a Commission licensee; and

8. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the above issue SHALL BE upon WPIX, Inc., and that the burden of proof under the above issue SHALL BE upon Forum Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R–371

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WPIX, INC. (WPIX), NEW YORK, N.Y. For Renewal of Broadcast License FORUM COMMUNICATIONS, INC., NEW YORK, N.Y. For Construction Permit for New Television Broadcast Station	Docket No. 18711 File No. BRCT–98 Docket No. 18712 File No. BPCT–4249

MEMORANDUM OPINION AND ORDER

(Adopted December 11, 1972; Released December 15, 1972)

BY THE REVIEW BOARD:

1. The principal question before the Board is whether WPIX, Inc. (WPIX) has violated Commission Rule 1.65 by the failure to amend its application to show that Mr. L. J. Pope will now "be responsible for the day-to-day operations of WPIX–TV . . . ," [1] and that his corporate title has been changed from vice president to executive vice president.[2]

2. The Review Board will add a comparative Rule 1.65 issue against WPIX. The potential significance of the above described change is due to the fact that WPIX's president, Mr. Fred M. Thrower, was previously represented as the person in charge of the day-to-day operations and, as such, a central figure in the inquiry under Issue 1 in this proceeding, which seeks to determine whether WPIX is guilty of distortion or falsification of the news as well as the adequacy of the control or supervision of the station's news operation. To the extent that Mr. Pope has replaced Mr. Thrower as the person responsible for the day-to-day operations of WPIX a significant change has occurred, and, although it is not entirely clear from the pleadings, the Board must agree with Forum Communications, Inc. (Forum) and the Broadcast Bureau that the change appears adequate to indicate that WPIX's application "is no longer substantially accurate and complete in all significant respects" as required by Rule 1.65.[3]

[1] This statement is contained in a letter from WPIX's counsel submitted to the Commission on July 26, 1972.

[2] Now before the Board are the following pleadings: (a) motion to enlarge the issues, filed July 28, 1972, by Forum; (b) opposition, filed August 7, 1972 by WPIX; (c) Broadcast Bureau's comments, filed August 10, 1972; (d) reply, filed August 17, 1972, by Forum; and (e) motion to supplement (b), filed August 28, 1972, by WPIX. The Board will accept WPIX's motion to supplement because it merely calls attention to a later filed amendment to its application and the other parties have not filed objections.

[3] WPIX indicates that WPIX's corporate management is now rearranged so that instead of all department heads, including Mr. Pope, now reporting directly to Mr. Thrower, the department heads will now report to Mr. Pope and a Mr. T. E. Mitchell, Jr., who will in turn report to Mr. Thrower. The Board also notes that, as indicated in the WPIX supplement, since July 21, 1972, two heads of the WPIX News Department have resigned.

3. In sum, the potential significance of this change should be explored at the hearing. In reaching this conclusion, we reject WPIX's contention that the filing of Ownership Reports, even when served on the other parties and with prior notice of "incorporation", is sufficient under the Rules. Also, we agree with the Broadcast Bureau that the "incorporation" procedure utilized by WPIX could unfairly place on the other parties and the Presiding Judge the burden of examining other Commission files, and such a result would clearly be contrary to established Commission policy. See *Folkways Broadcasting Inc.*, 26 FCC 2d 175, 20 RR 2d 528 (1970); and *Central Broadcasting Corp.*, 3 FCC 2d 577, 8 RR 2d 347 (1966). However, it is clear that there was no intention to deceive or mislead either the Commission or the other parties, as indicated by service of the Ownership Reports on the other parties and the letter to the Commission, footnote 1, *supra*. Therefore, the issue will be added on a comparative basis only. *RKO General Inc.*, (*WNAC–TV*), 34 FCC 2d 265, 24 RR 2d 16 (1972); *Great Southern Broadcasting Co.*, 18 FCC 2d 599, 16 RR 2d 864 (1969); and *Minshall Broadcasting Co., Inc.*, 10 FCC 2d 647, 11 RR 2d 754 (1967).

4. Accordingly, IT IS ORDERED, That the motion to supplement opposition to motion to enlarge issues, filed August 28, 1972, by WPIX, Inc., IS ACCEPTED; and

5. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed July 28, 1972, by Forum Communications, Inc., IS GRANTED to the extent indicated below, and IS DENIED in all other respects; and the issues in this proceeding ARE ENLARGED to include the following issue:

To determine whether WPIX, Inc. has failed to comply with Commission Rule 1.65, and if so, the effect thereof upon the applicant's comparative qualifications to be a Commission licensee; and

6. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the above issue SHALL BE upon Forum Communications, Inc., and that the burden of proof under the above issue SHALL BE upon WPIX, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*